

(11)

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1906.

No. , Original

STATE OF FLORIDA, COMPLAINANT,

vs.

ANDREW W. MELLON, as SECRETARY OF THE TREASURY OF THE UNITED STATES, AND DAVID H. BLAIR, as COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT AND BILL OF COMPLAINT

JOHN B. JOHNSON

Attorney General for the State of Florida

FRANK O. KNIGHT

LEWIS C. GLENN

of counsel

IN THE
SUPREME COURT OF THE UNITED STATES
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ANDREW W. MELLON, AS SECRETARY OF THE TREASURY OF THE UNITED STATES, AND DAVID H. BLAIR, AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, DEFENDANTS.

MOTION.

Comes now the State of Florida, by John B. Johnson, the Attorney General of the State of Florida, and Peter O. Knight and James F. Glen, of counsel for the State of Florida, and respectfully moves this Honorable Court to grant to the said State leave and right to file an exhibit in this Honorable Court, her bill of complaint against Andrew W. Mellon, Secretary of the Treasury of the United States, and David H. Blair, Commissioner of Internal Revenue of the United States, enjoining them, and each of them, from under-

taking to collect and enforce the collection of the taxes on estates of decedents in the State of Florida, as imposed and provided for in the Revenue Act of the United States approved February 26, A. D. 1926. The Bill of Complaint proposed, offered and tendered to be filed is herewith presented and made a part of this motion.

Respectfully submitted,

JOHN B. JOHNSON,

Attorney General for the

State of Florida.

PETER O. KNIGHT,

JAMES F. GLEN,

Of Counsel for State.

[Endorsed:] In the Supreme Court of the United States. State of Florida, complainant, *vs.* Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, defendant. Motion for leave to file bill of complaint. J. B. Johnson, Attorney General of Florida, Tallahassee, Fla.; Peter O. Knight, Tampa, Fla.; James F. Glen, Tampa, Fla., of counsel for complainant.

IN THE SUPREME COURT OF THE UNITED
STATES.

OCTOBER TERM, 1925.

STATE OF FLORIDA, *Complainant*,

vs.

ANDREW W. MELLON, *as Secretary of the Treasury of the United States*, and DAVID H. BLAIR, *as Commissioner of Internal Revenue of the United States*, *Defendants*.

To the Honorable Justices of the Supreme Court of the United States, in chancery sitting:

The State of Florida brings this its bill of complaint against Andrew W. Mellon as Secretary of the Treasury of the United States, who is a citizen of the State of Pennsylvania, and David H. Blair, as Commissioner of Internal Revenue of the United States, who is a citizen of the State of North Carolina, and thereupon your orator, complaining, says:

1. That the full names of the defendants are, respectively, Andrew W. Mellon and David H. Blair; that the former is a citizen of the State of Pennsylvania and a resident of Pittsburgh in the said State, and the latter is a citizen of the State of North Carolina and a resident of the said State.

2. That the jurisdiction of the Court depends upon the fact that the State of Florida is a party as com-

plainant and the suit is one in equity arising under the Constitution of the United States and one between a State and citizens of other States.

3. That the Constitution of Florida contains a clause, which was adopted at the general election in November, 1924, and is Section 11 of Article 9, in the following language:

“SEC. 11. No tax upon inheritances or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, and there shall be exempt from taxation to the head of a family residing in this State, household goods and personal effects to the value of five hundred (\$500.00) dollars.”

4. That the Act of Congress approved February 26, 1926, and described therein for the purpose of citation as the “Revenue Act of 1926,” by Section 301 thereof, imposed certain graduated taxes on the estates of decedents, subject to a provision in the following language:

“The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by Section 304.”

5. That the defendants, Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, are the officers primarily charged with the execution of the provisions of the said "Revenue Act of 1926," and are insisting upon and seeking to enforce the provisions of Section 301 thereof; and a number of citizens of the State of Florida have died since the said act was passed, and according to its terms went into operation, leaving estates subject to taxation under the terms of the aforesaid Section 301 of the said act, and the said defendants have required and are requiring the legal representatives of such decedents to make returns to the said defendants of the property and estates of such decedents for the purpose of assessing and collecting taxes thereon under the provisions of the aforesaid Section 301 of the said act, and it is the purpose and intention of the said defendants to continue to require such returns to be made and to compel payment of the amount due on such estates, as well as on the estates of persons dying hereafter, under the terms of the said Section 301, and the action of the defendants in so doing, unless restrained, will result in the withdrawal from the State of Florida of money to the extent of several million dollars per annum, and in that way diminish the revenues of the State of Florida, which are derived largely from the taxation of property within the State.

6. That the State of Florida is directly interested under the provisions of the said Revenue Act of the

United States approved February 26, 1926, in this that the State of Florida raises a sufficient amount of revenue by taxation with which to pay the expenses of the State government other than the imposing and levying of an excise or tax on estates of decedents or inheritances and by imposing a tax on incomes; that under and by the terms and provisions of the said Revenue Act of the United States aforesaid the sovereign rights of the State of Florida have been invaded and this Revenue Act is a direct effort on the part of the Congress of the United States—

(a) To coerce the State of Florida into imposing and levying an estate or inheritance tax, and

(b) To penalize the State of Florida and its property and citizens for the failure upon the part of the State to impose a tax or excise on estates of decedents or inheritance tax.

7. That the State of Florida is further directly interested in preventing any unlawful discrimination against its citizens in the matter of taxation, which discrimination it is advised and believes is effected by the provisions of Section 301 of the act aforesaid; and it is also interested in protecting its citizens against risk of prosecution for failure to comply with the provisions of the said "Revenue Act of 1926," designed to provide the machinery for the collection of the tax imposed by the said Section 301.

8. That the District of Columbia and all of the States of the United States, excepting only Florida, Alabama, and Nevada, levy estate, inheritance, legacy, or suc-

cession taxes payable out of estates of decedents, and did so at the time of the passage of the said "Revenue Act of 1926," and by reason of its constitutional provision herein quoted it is impossible for the State of Florida to place its citizens on an equality with citizens of other States and the District of Columbia in respect to the operation of the said "Revenue Act of 1926."

9. That the State of Florida is advised and believes that the said "Revenue Act of 1926," in so far as it undertakes by Section 301 to make a levy on the estates of decedents is in violation of Section 8 of Article I of the Constitution of the United States, which requires that "all duties, imposts, and excises shall be uniform throughout the United States."

10. That the State of Florida is advised and believes that it is entitled to an injunction enjoining and restraining the defendants, Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, and each of them, their servants, agents, and employees, from proceeding to assess against or collect from the legal representatives of decedents' estates in the State of Florida the taxes sought to be imposed by Section 301 of the said "Revenue Act of 1926," and from requiring returns from such representatives, preparatory to the assessment and collection thereof, and from taking any steps looking to the enforcement of the provisions of the said Section 301.

Forasmuch, therefore, as your orator is without remedy save in a court of equity, and to the end that the said defendants, Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, may, if they can, show cause why your orator should not have the relief herein and hereby prayed, and that they may answer all and singular the premises in as full and particular a manner as if the same were herein set forth as interrogatories and the said defendants specially interrogated in regard thereto, answers under oath of the said defendants being hereby expressly waived.

And in view of the premises, may it please the Court to order, adjudge, and decree that the "Revenue Act of 1926," in so far as it undertakes by Section 301 to make a levy on the estates of decedents, as well as in so far as it provides machinery to carry that purpose into effect, is in violation of Section 8 of Article I of the Constitution of the United States, and to grant your orator an injunction enjoining and restraining the defendants, Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, and each of them, their servants, agents, and employees, from proceeding to assess against or collect from the legal representatives of decedents' estates in the State of Florida the taxes sought to be imposed by said Section 301 of the said "Revenue Act of 1926," and from requiring returns from said representatives preparatory to the assessment and

collection thereof, and from taking any steps looking to the enforcement of the said Section 301.

May it further please the Court to grant unto your orator a writ of subpoena to be directed to the defendants, Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, commanding them, upon a day certain and under a certain penalty therein to be prescribed, personally to be and appear before this Honorable Court, then and there to answer all and singular the premises and to stand to, abide, and perform such orders and decrees therein as the Court shall make in the premises.

May it further please the Court to grant unto your orator such other and further relief in the premises as the nature of the case may require and as unto the Court shall seem meet and proper and agreeable to equity and good conscience.

And, as in duty bound, your orator will ever pray,
etc.

JOHN B. JOHNSON,

Attorney General of the State of Florida.

PETER O. KNIGHT,

JAMES F. GLEN,

Of Counsel for State.

State of Florida,
Executive Department,
Tallahassee.

John W. Martin, Governor; Bessie Gibbs Porter,
Acting Secretary.

MAY 25, 1926.

Hon. John B. Johnson, Attorney General of the State
of Florida, Tallahassee, Florida.

SIR:

You are hereby authorized and directed to institute proper proceedings and suit in the United States Supreme Court against the United States, or the proper officials thereof, to test the constitutionality and validity of that provision in the revenue law of the United States approved February 26, 1926, where said law imposes a tax upon the estates of decedents and allows a rebate on any such tax collected to all citizens or in all cases where an estate or inheritance tax is paid to a State, such rebate not exceeding eighty (80%) per cent of the amount of the Federal inheritance tax or estate tax imposed; and to enjoin the collection of such taxes in the State of Florida.

Witness my hand and the seal of the State of Florida, this the date above written.

JOHN W. MARTIN,
Governor of the State of Florida.

Attest:
[SEAL.]

H. CLAY CRAWFORD,
Secretary of State.

STATE OF FLORIDA,
County of Leon,
City of Tallahassee:

Before me, the undersigned, an officer duly authorized by law to administer oaths, personally came John B. Johnson, who, being first duly sworn, says that he is the lawfully commissioned Attorney General of the State of Florida; that the allegations and matters set forth in the foregoing bill of complaint exhibited by the State of Florida, as complainant, against Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of the Internal Revenue of the United States, as defendants, are true in fact, and that filing of bill of complaint and the institution of such suit by the Attorney General is authorized by John W. Martin, Governor of the State of Florida, as will more fully appear by reference to the order of the Governor attached to the bill of complaint.

JOHN B. JOHNSON,
Attorney General.

Sworn to and subscribed before me this 26th day of May, A. D. 1926.

[SEAL.] ALLIE YAWN BROWN,
Notary Public,
State of Florida at Large.

[Endorsed:] In the Supreme Court of the United States. State of Florida, complainant, vs. Andrew W. Mellon, as Secretary of the Treasury of the United

States, and David H. Blair, as Commissioner of Internal Revenue of the United States, defendants. Bill of complaint. J. B. Johnson, Attorney General of Florida, Tallahassee, Fla.; Peter O. Knight, Tampa, Fla.; James F. Glen, Tampa, Fla., of counsel for complainant.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1925.

STATE OF FLORIDA, *Complainant,*

vs.

ANDREW W. MELLON, *as Secretary of the Treasury of the United States, and DAVID H. BLAIR, as Commissioner of Internal Revenue of the United States, Defendants.*

NOTICE.

To Honorable Andrew W. Mellon, Secretary of the Treasury of the United States, Washington, D. C., and David H. Blair, Commissioner of Internal Revenue of the United States, Washington, D. C.:

You, and each of you, will please hereby take notice that the undersigned, counsel for the State of Florida, will, on motion, apply to the Supreme Court of the United States for leave and an order allowing the State of Florida to file an exhibit, her bill of complaint, against yourselves, praying in said bill that you, and each of you, be enjoined and restrained from collecting or undertaking to collect from any estates of decedents within the jurisdiction of the State of Florida the estate or inheritance tax levied and imposed by the United States Revenue Act approved February 26, A. D. 1926; that said motion and application will be

presented to the Supreme Court of the United States at 12 o'clock noon Thursday, the 3d day of June, A. D. 1926, or as soon after said hour as said motion can be presented and heard by said court; that a true and correct copy of said motion and of the bill of complaint proposed to be filed are hereto attached and made a part of this notice.

JOHN B. JOHNSON,
Attorney General for the State of Florida.

PETER O. KNIGHT,
JAMES F. GLEN,
Of Counsel for the State.

STATE OF FLORIDA,
County of Leon:

Before me, the undersigned, an officer duly authorized by law to administer oaths, personally came John B. Johnson, who, being first duly sworn, says that he is the legally qualified and commissioned Attorney General of the State of Florida; that he on this date mailed a true and correct copy of the foregoing notice, together with copy of motion and bill of complaint mentioned in said notice, to each, viz, Honorable Andrew W. Mellon, Secretary of the Treasury of the United States, Washington, D. C., and to Honorable David H. Blair, Commissioner of Internal Revenue of the United States, Washington, D. C.; that said papers were mailed by registered mail in an envelope securely

sealed and addressed as above, with all postage prepaid.

JOHN B. JOHNSON,
Attorney General for the State of Florida.

Sworn to and subscribed before me this 26th day of May, A. D. 1926,

[SEAL.]

ALLIE YAWN BROWN,
Notary Public, State of Florida at Large.

[Endorsed:] In the Supreme Court of the United States. State of Florida, complainant, *vs.* Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, defendants. Notice. J. B. Johnson, Attorney General of Florida, Tallahassee, Fla.; Peter O. Knight, Tampa, Fla.; James F. Glen, Tampa, Fla., of counsel for complainant.

[Endorsed:] File No. —. Supreme Court U. S., October Term, 1925. Term No. —, original. State of Florida, complainant, *vs.* Mellon, Secretary of the Treasury, *et al.* Motion for leave to file bill of complaint, bill of complaint and affidavit of service thereof and of notice of presentation. Filed May 29, 1926.



(12)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. , Original.

STATE OF FLORIDA, COMPLAINANT,

vs.

ANDREW W. MELLON, AS SECRETARY OF THE TREASURY OF THE UNITED STATES; AND DAVID H. BLAIR, AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES.

**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO
FILE BILL OF COMPLAINT.**

JOHN B. JOHNSON,
Attorney General of the State of Florida.

PETER O. KNIGHT,
JAMES F. GLEN,
Of Counsel for the State.

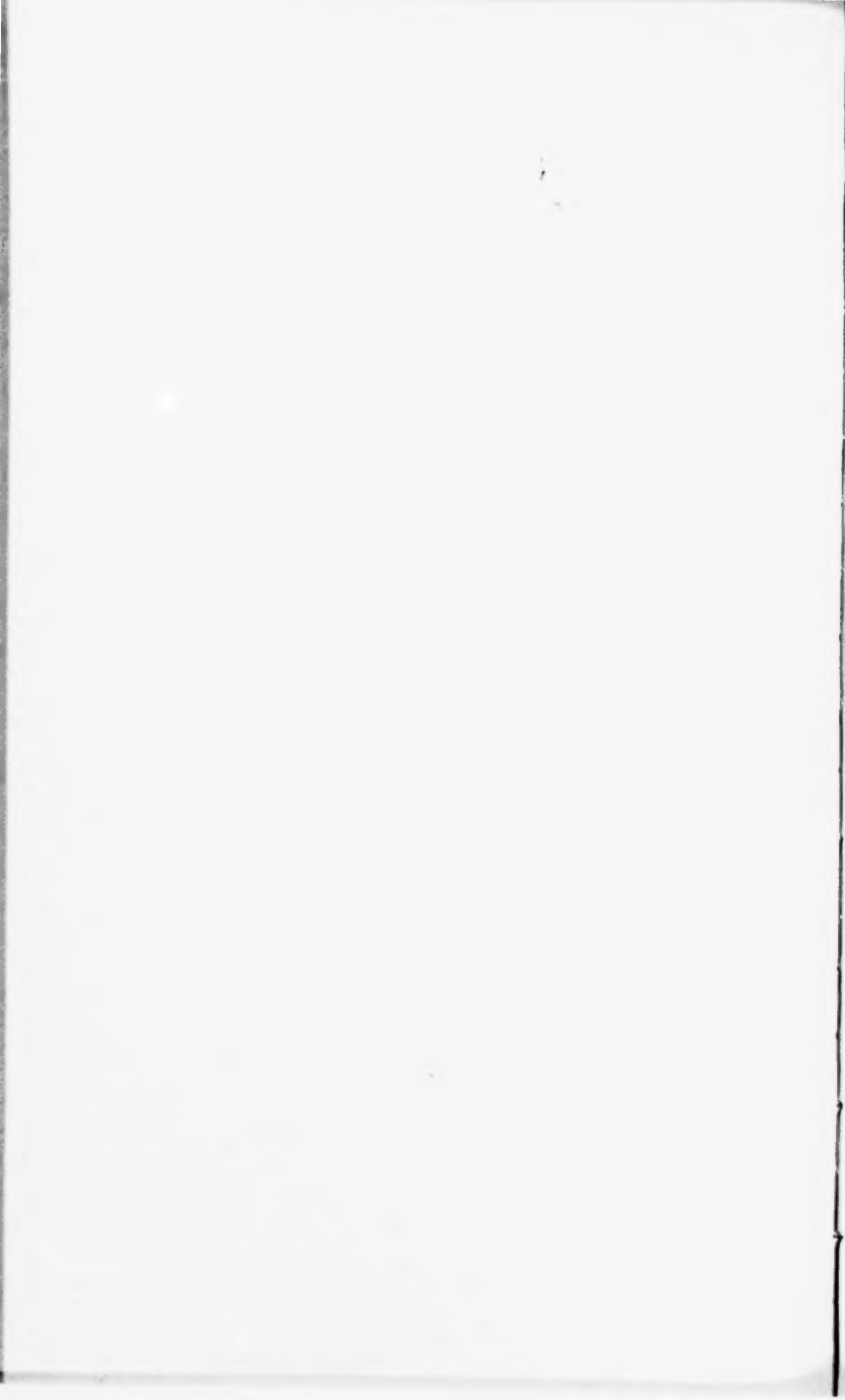


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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, A. D. 1925.

No. , Original.

STATE OF FLORIDA, COMPLAINANT,

vs.

ANDREW W. MELLON, AS SECRETARY OF THE TREASURY OF THE UNITED STATES; AND DAVID H. BLAIR, AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, DEFENDANTS.

BRIEF OF JOHN B. JOHNSON,

Attorney General of the State of Florida, on Motion and Application to the Court for Leave to File Bill of Complaint in this Cause.

The purpose of this suit is to enjoin the Secretary of the Treasury of the United States and the Commissioner of Internal Revenue of the United States from undertaking to enforce the collection of the estate or

inheritance tax as imposed by the Internal Revenue Act of the United States, approved February 26, 1926, for the reason that the imposition of said tax by said act is unconstitutional and void in that it is not uniform as required by Section 8 of Article I of the Constitution of the United States and on the ground that the estate tax provision of said act as passed invades, and undertakes to take away from the State of Florida and States in like situation, their sovereign power and is an undertaking by other States in the Union to either coerce the State of Florida into levying an estate tax or to put the State of Florida on a parity with other States collecting taxes on estates.

Section 8 of Article I of the Constitution of the United States provides:

“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; * * *

Paragraph 3 of Section 2 of Article I of the Constitution of the United States provides:

“Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, * * *

In the case of *Scholey v. Rew*, reported in 90 U. S., 331, the Supreme Court has held:

"Support to the first objection is attempted to be drawn from that clause of the Constitution which provides that direct taxes shall be apportioned among the several states which may be included within the Union according to their respective numbers; and also from the clause which provides that no capitation or other direct tax shall be laid unless in proportion to the census or amended enumeration; but it is clear that the tax or duty levied by the Act under consideration is not a direct tax within the meaning of either of those provisions. Instead of that, it is plainly an excise tax or duty, authorized by Section 8 of Article I, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare."

In the case of *Knowlton v. Moore*, reported in 178 U. S., 41, the Supreme Court of the United States (at page 69) has held:

"* * * but it is clear that the tax or duty levied by the Act under consideration is not a direct tax within the meaning of either of these provisions. Instead of that, it is plainly an excise tax or duty authorized by Section 8 of Article I which vests the power in Congress to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the defense and general welfare."

In the two cases above cited, *Scholey v. Rew* and *Knowlton v. Moore*, the Court had under consideration the statutes imposing inheritance or estate taxes.

“An inheritance tax in any of its customary forms is not a tax on the property of the decedent with respect to which it is levied, but is an excise imposed on the privilege of transmitting or receiving property upon the death of the owner, and consequently is not subject to any of the constitutional limitations upon taxes on property found in the state constitutions; nor is it a direct tax within the meaning of the Constitution of the United States, but falls within the class of ‘duties, imposts and excises,’ provided for by that instrument. An inheritance tax is not transformed into a property tax by reason of the fact that the tax is made a lien on the property the succession to which is taxed, nor does the fact that the amount of the tax depends upon the value of the property transmitted render the tax a tax on the property, since it is usual and proper to proportion the amount of an excise to the value of the privilege taxed, and the value of the privilege depends directly upon the value of the property transmitted. * * *

See 26th Ruling Case Law, Section 167 and authorities cited.

From the above authorities it is clear that the estate or inheritance tax imposed by Congress is a duty or an excise which must be uniform under the provisions of Section 8 of Article I of the Constitution of the United States.

“A tax is an enforced contribution of money or other property—

New Jersey *v.* Anderson, 203 U. S., 483,
27 S. Ct., 137, 51 U. S. (L. ed.), 284.

- Houck v. Little River Drainage Dist.*,
239 U. S., 254; 36 S. Ct., 58, 60 U. S.
(L. ed.), 266.
- Mercier's Succession*, 42 La. Ann., 1135;
8 So., 732; 11 L. R. A., 817.
- North Missouri R. Co. v. Maguire*, 49
Mo., 490; 8 Am. Rep., 141.
- Matter of Pell*, 171 N. Y., 48; 63 N. E.,
789; 89 A. S. R., 791; 57 L. R. A., 540.
- Redmond v. Tarboro*, 106 N. C., 122; 10
S. E., 845; 7 L. R. A., 539.
- Aetna F. Ins. Co. v. Jones*, 78 S. Ct., 445;
59 S. E., 148; 125 A. S. R., 818; 13 L.
R. A. (N. S.), 1147.
- Foster v. Stevens*, 63 Vt., 175; 22 Atl.,
78; 13 L. R. A., 166.
- Note: 8 A. S. R., 506."

"assessed in accordance with some reasonable
rule of apportionment—

- Pollock v. Farmers' Loan, etc. Co.*, 157
U. S., 429; 15 S. Ct., 673; 39 U. S., (L.
ed.), 759.
- Houck v. Little River Drainage Dist.*,
239 U. S., 254; 36 S. Ct., 58; 60 U. S.,
(L. ed.), 266.
- North Missouri R. Co. v. Maguire*, 49
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- Foster v. Stevens*, 63 Vt., 175; 22 Atl.,
78; 13 L. R. A., 166.
- Notes: 8 A. S. R., 506; 60 L. R. A.,
322."

assessed "by authority of a sovereign state—

Morgan's Louisiana, etc., R., etc. Co. *v.*
Louisiana Board of Health, 118 U. S.,
455; 6 S. Ct., 1114; 30 U. S. (L. Ed.),
237.

Mercier's Succession, 42 La. Ann., 1135;
8 So., 732; 11 L. R. A., 817.

Redmond *v.* Tarboro, 106 N. C., 122; 10
S. E., 845; 7 L. R. A., 539.

Aetna F. Ins. Co. *v.* Jones, 78 S. C., 445;
59 S. E., 148; 125 A. S. R., 818; 13 L.
R. A. (N. S.), 1147.

Foster *v.* Stevens, 63 Vt., 175; 22 Atl.,
78; 13 L. R. A., 166.

Note: 8 A. S. R., 506."

assessed "on persons or property within its
jurisdiction—

State Tax on Foreign-Held Bonds, 15
Wall., 300; 21 U. S. (L. ed.), 179.

New Jersey *v.* Anderson, 203 U. S., 493;
27 S. Ct., 137; 51 U. S. (L. ed.), 284.

Mercier's Succession, 42 La. Ann., 1135;
8 So., 732; 11 L. R. A., 817.

North Missouri R. Co. *v.* Maguire, 49
Mo., 490; 8 Am. Rep., 141.

Redmond *v.* Tarboro, 106 N. C., 122; 10
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Aetna F. Ins. Co. *v.* Jones, 78 S. C., 445;
59 S. E., 148; 125 A. S. R., 818; 13 L.
R. A. (N. S.), 1147.

Foster *v.* Stevens, 63 Vt., 175; 22 Atl.,
78; 13 L. R. A., 166.

assessed "for the purpose of defraying the public expenses—

- Citizens' Sav., etc. Ass'n v. Topeka*, 20 Wall., 655; 22 U. S. (L. ed.), 455.
Morgan's Louisiana, etc. R. etc., Co. v. Louisiana Board of Health, 118 U. S., 453; 6 S. Ct., 1114; 30 U. S. (L. ed.), 237.
Pollock v. Farmers' Loan etc., Co., 157 U. S., 429; 15 S. Ct., 673; 39 U. S. (L. ed.), 759.
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Houck v. Little River Drainage Dist., 239 U. S., 254; 36 S. Ct., 58; 60 U. S. (L. ed.), 266.
Mercier's Succession, 42 La. Ann., 1135; 8 So., 732; 11 L. R. A., 817.
North Missouri R. Co. v. Maguire, 49 Mo., 490; 8 Am. Rep., 141.
Matter of Pell, 171 N. Y., 48; 63 N. E., 789; 89 A. S. R., 791; 57 L. R. A., 540.
Redmond v. Tarboro, 106 N. C., 122; 10 S. E., 845; 7 L. R. A., 539.
Aetna F. Ins. Co. v. Jones, 78 S. C., 445; 59 S. E., 148; 125 A. S. R., 818; 13 L. R. A. (N. S.), 1147.
Foster v. Stevens, 63 Vt., 175; 22 Atl., 78; 13 L. R. A., 166.
 26th Ruling Case Law, page 13, Section 2."

There is an old saying that "The power to tax is the power to destroy." That truism still holds good. No Government, whether it be the United States or

any State, county or municipality, is authorized or warranted in levying and assessing a tax on the subjects not necessary to maintain the Government and pay the legitimate expenses thereof.

We have not lost sight of the fact that governments sometimes derive some revenue from regulatory measures, which are enacted largely for police regulation and protection. The authorities do not classify the revenue raised under the provisions of regulatory measures as a tax. For the purpose of the question in hand we can lose sight of all revenue raised under the provisions of regulatory measures because these have no part or place.

The United States are compelled to raise a sufficient amount of revenue to meet the legitimate expenses of the Federal Government. The Constitution of the United States provides how this revenue shall be raised. Where the United States undertakes to raise revenue by taxation it is to be done or apportioned among the several States according to their respective numbers. Where they undertake to raise the necessary revenue through the imposition of duties, imposts and excises these duties, imposts and excises must be uniform throughout the United States.

The estate or inheritance tax, duty or excise imposed by Congress is not a regulatory measure. It is not imposed for the purpose of penalizing any State or class of citizens. It is imposed solely as a source of revenue.

The Constitution of the United States has left it to the several States to raise the revenue necessary to

pay the expenses of the State governments in whatever manner the several States elect to adopt except that no State can, without the consent of Congress, lay any imposts or duties on imports or exports; nor are the States allowed to burden Interstate Commerce or Federal agencies by taxation unless the same is done by direct consent of Congress. Each State passes such revenue laws as it, in its judgment, good or bad, deems fit and proper. We all appreciate the fact that the States generally raise a large portion of their revenue through an ad valorem tax on real and personal property and a license tax on various lines of business. Each State, of course, has to raise a certain amount of revenue with which to pay the expenses of the State government. One State may adopt one method of taxation or tax one class of property. Another State may adopt some other method of taxation and tax another class of property, but the sole aim in view as to any State is to raise a sufficient amount of revenue from the businesses and property in the State with which to pay the public expenses.

Neither the Congress of the United States nor any other authority should undertake to direct or coerce any State into adopting or using any particular method or process of imposing taxes upon any particular business or class of persons or property for the purpose of raising the necessary revenue. Each State, like the United States, has to raise a certain amount of revenue with which to pay the governmental expenses. For the purpose of raising this revenue the taxes imposed have to be as equitable and uniform as human intelli-

gence and ingenuity can devise. If one State sees fit to increase the amount of direct ad valorem taxes on property and allows other lines of business to go free from taxation such a State should not be penalized. Each individual, each community, county or State has a maximum earning capacity. They also have a normal earning capacity. In the last analysis they have to live and subsist on what they earn. When taxes of any class are imposed these taxes, in the final analysis, are taken from the individual's earnings and when applied to a State, from the earnings of the individuals composing that State.

In the levying of this tax by the Revenue Act, as appears in Section 301 thereof, the following provision is incorporated:

“The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by Section 304.

This Court takes judicial notice of the Congressional Record. If the Court will refer to the Congressional Record of Tuesday, February 9, 1926, it will clearly appear to the Court from the proceedings recorded in said issue of the Congressional Record, from page

3286 to page 3299, that the general purpose of the estate tax provision above referred to is:

1st. To coerce the State of Florida into levying an inheritance tax in keeping with the inheritance tax levied by other States.

2nd. To undertake to secure as far as possible uniformity in the payment of inheritance or estate taxes by the several States of the Union.

3rd. To penalize the State of Florida for refusing to levy an estate or inheritance tax and for having prohibited the levying of such a tax by constitutional amendment.

As appears on the face of this estate tax provision in the Revenue Law and as appears in the proceedings when said provision was under discussion in the Senate of the United States, as recorded in the Congressional Record of February 9, 1926, we submit that this provision of the law was not passed for the purpose of raising Federal revenue. It was not passed for the purpose of collecting Federal taxes from estates in the State of Florida. It was not passed for the purpose of coercing or penalizing estates in the State of Florida but the State itself as a sovereign power.

We submit that the representatives of any estate would have the right to contest the payment of an estate tax under this provision and call into question the constitutionality of the Act, but by reason of the purposes of the Act and the infringement by the representatives of other States on the sovereign right of the

State of Florida to secure her State revenue from whatever source she sees fit there is given to the State, as a member of this Union, the paramount right to question the constitutionality and legality of this estate tax provision.

The question to be presented here at this time is upon the application of the State of Florida for leave to exhibit her Bill of Complaint in this Court to have the constitutionality and validity of this estate tax law passed upon and adjudicated. The State of Florida is a unit among the States of the United States. She has equal rights with every other State in the Union. When her sovereign rights are attacked or affected by Federal legislation or by the other States in the United States, or any of them, the Constitution of the United States gives to any State the right to protect herself in this Court. Section 2 of Article III of the Constitution of the United States provides:

“In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court (of the United States) shall have original jurisdiction. * * *

Right of State to File Bill.

As will appear by reference to Order from the Governor of the State of Florida, under date of May 25, 1926, attested by the Secretary of State attached to the Bill of Complaint, the Governor ordered and directed the Attorney General of the State of Florida to insti-

tute the proceedings here proposed. In the case of *Washington State v. Northern Securities Company*, reported in the 185th U. S., page 254, this Court laid down this rule:

“In the exercise of original jurisdiction by this Court the usual practice in equity cases is to hear applications for leave to file bills, *ex parte* and, ordinarily, leave is granted as of course.”

In this case the Court further held:

“Where the objection is one of jurisdiction over the subject matter, and the case is of grave importance, leave to file will be granted that the fullest argument may be had.”

The Court further held in this case:

“In the exercise of original jurisdiction the court has always necessarily proceeded with the utmost care and deliberation, and, in respect of all contested questions, on the fullest argument; and in the matter of practice we are obliged to bear in mind, in an especial degree, the effect of every step taken in the instant case on those which may succeed it. In view of this it seems to us advisable to take the same course on the pending application as was pursued in *Louisiana v. Texas*, that is, without intimating any opinion whatever on the questions suggested, to grant leave to file in accordance with the usual practice. Our rules require service sixty days before the return day of process, but as the final adjournment of the term will have

taken place within that time, process will be made returnable on the first day of the next term."

In our humble opinion the present case is one of far-reaching importance. We do not look upon the estate tax provision of this Revenue Law as action by the United States. The United States can only exercise those powers granted to them by the Constitution. When officials, in the discharge of their official functions, go beyond and in violation of the provisions of the Constitution, they are not acting for the United States, but are reflecting their personal opinions, feelings and sentiments. The passage of this Estate Tax Law was not for the purpose of raising revenue for the benefit of the United States Government; but is a concerted effort on the part of the members of Congress from their individual States to force Florida to make changes in her internal affairs, and to put Florida on a parity with other States; and for these purposes they are undertaking to use Federal authority.

If the principle involved here is allowed to go unchecked, we might as well rewrite the Constitution of the United States and eliminate State lines and State governments.

This honorable Court will appreciate that in the limited time we have had we are not able to present the questions involved in this case in all their phases and to make the showing to which the subject matter is entitled. We earnestly hope the Court will allow this Bill to be filed, process to issue and the rights of the State of Florida and the constitutionality and

validity of this Estate Tax Law to be fully presented by brief, or in any manner that this honorable Court shall direct.

Respectfully submitted,

JOHN B. JOHNSON,

Attorney General of the State of Florida.

PETER O. KNIGHT,

JAMES F. GLEN,

Of Counsel for the State.

(1803)



Supreme Court of the United States

OCTOBER TERM, 1925.

No. , Original

STATE OF FLORIDA, COMPLAINANT,

vs.

ANDREW W. MELLON, AS SECRETARY OF THE TREASURY OF THE UNITED STATES; AND DAVID H. BLAIR, AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, DEFENDANTS.

BRIEF ON RULE DIRECTED TO DEFENDANTS TO SHOW CAUSE WHY THE STATE SHOULD NOT BE ALLOWED TO FILE BILL OF COMPLAINT, RETURNABLE OCTOBER 4TH, A. D. 1926.

JOHN B. JOHNSON,
Attorney General of the State of Florida.

PETER O. KNIGHT,
JAMES F. GLEN,
Of Counsel for the State.



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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1925

No. , Original

STATE OF FLORIDA, COMPLAINANT,

vs.

ANDREW W. MELLON, AS SECRETARY OF THE TREASURY OF THE UNITED STATES, AND DAVID H. BLAIR, AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, DEFENDANTS,

**BRIEF OF COUNSEL FOR THE STATE OF FLORIDA,
ON RULE DIRECTED TO DEFENDANTS TO SHOW
CAUSE WHY THE STATE SHOULD NOT BE AL-
LOWED TO FILE BILL OF COMPLAINT, RETURN-
ABLE OCTOBER 4TH, A. D. 1926.**

By Executive Order under date of May 25th, 1926, said Order having been issued and signed by John W. Martin, Governor of the State of Florida, and attested by H. Clay Crawford, Secretary of State, with the Seal of the State affixed thereon, the Attorney General of the State was ordered and directed to institute proper proceedings in the Supreme Court of the United States to test the constitutionality and validity of that provision in the Revenue Law of the United States approved

February 26th, 1926, where said law imposes a tax on the estates of decedents and allows a rebate on any such tax collected to all citizens or in all cases where an estate or inheritance tax is paid to a State, such rebate not to exceed eighty (80%) per cent. of the amount of the Federal inheritance or estate tax imposed; and to enjoin the collection of such taxes in the State of Florida.

On June 1st, 1926, the Attorney General of the State of Florida, in open Court, filed and presented motion to be allowed to file original bill of complaint on behalf of the State of Florida against Andrew W. Mellon, Secretary of the Treasury of the United States, and David H. Blair, Commissioner of Internal Revenue of the United States. (The proposed original bill of complaint was tendered to be filed with, and at the time of making, said motion.) The said proposed bill of complaint prays:

“* * * the Court to order, adjudge and decree that the ‘Revenue Act of 1926’ in so far as it undertakes by Section 301 to make a levy on the estates of decedents, as well as in so far as it provides machinery to carry that purpose into effect, is in violation of Section 8 of Article I of the Constitution of the United States, and to grant” to the State of Florida “an injunction enjoining and restraining the defendants, Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, and each of them, their servants, agents, and employees, from proceeding to assess against or collect from the legal representatives of decedents’ estates in the State of Florida the taxes sought to be imposed by said Section 301 of the said ‘Revenue Act of 1926,’

and from requiring returns from said representatives preparatory to the assessment and collection thereof, and from taking any steps looking to the enforcement of the said Section 301. * * * and to grant such other and further relief in the premises * * *"

On motion for leave to file the original bill of complaint, the Court issued rule directed to the defendants requiring them to show cause why the State of Florida should not be allowed to file its proposed bill of complaint. This rule is returnable to October 4th, 1926.

The pertinent allegations of the proposed bill of complaint are:

1. "That the Constitution of Florida contains a clause, which was adopted at the general election in November, 1924, and is Section 11 of Article IX, in the following language:

" 'Sec. 11. No tax upon inheritances or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, and there shall be exempt from taxation to the head of a family residing in this State, household goods and personal effects to the value of five hundred (\$500.00) dollars.' "

Paragraph 3, Bill of Complaint.

2. "That the Act of Congress approved February 26, 1926, and described herein for the purpose of citation as the 'Revenue Act of 1926,' by Section 301 thereof, imposed certain graduated taxes on the estates of decedents, subject to a provision in the following language:

“ ‘The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by Section 304.’ ”

Paragraph 4, Bill of Complaint.

3. “That the defendants, Andrew W. Mellon, as Secretary of the Treasury of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States, are the officers primarily charged with the execution of the provisions of said ‘Revenue Act of 1926,’ and are insisting upon and seeking to enforce the provisions of Section 301 thereof; and a number of the citizens of the State of Florida have died since the said Act was passed, and according to its terms went into operation, leaving estates subject to taxation under the terms of the aforesaid Section 301 of the said Act, and the said defendants have required and are requiring the legal representatives of such decedents to make returns to the said “defendants of the property and estates of such decedents for the purpose of assessing and collecting taxes thereon under the provisions of the aforesaid Section 301 of the said Act, and it is the purpose and intention of the said defendants to continue to require such returns to be made and to compel payment of the amount due on such estates, as well as on the estates of persons dying hereafter, under the terms of the said Section 301, and the action of the defendants

in so doing, unless restrained, will result in the withdrawal from the State of Florida of money to the extent of several million dollars per annum, and in that way diminish the revenues of the State of Florida, which are derived largely from the taxation of property within the State."

Paragraph 5, Bill of Complaint.

4. "That the State of Florida is directly interested under the provisions of the said Revenue Act of the United States approved February 26, 1926, in this that the State of Florida raises a sufficient amount of revenue by taxation with which to pay the expenses of the State Government other than the imposing and levying of an excise or tax on estates of decedents or inheritances and by imposing a tax on incomes; that under and by the terms and provisions of the said Revenue Act of the United States aforesaid the sovereign rights of the State of Florida have been invaded and this Revenue Act is a direct effort on the part of the Congress of the United States—

- "(a) To coerce the State of Florida into imposing and levying an estate or inheritance tax, and
- "(b) To penalize the State of Florida and its property and citizens for the failure upon the part of the State to impose a tax or excise on estates of decedents or inheritance tax."

Paragraph 6, Bill of Complaint.

5. "That the State of Florida is further directly interested in preventing any unlawful discrimination against its citizens in the matter of taxation, which discrimination it is advised and believes is effected by the provisions of Section 301 of the Act aforesaid; and it

is also interested in protecting its citizens against risk of prosecution for failure to comply with the provisions of the said 'Revenue Act of 1926,' designed to provide the machinery for the collection of the tax imposed by the said Section 301."

Paragraph 7, Bill of Complaint.

6. "That the District of Columbia and all of the States of the United States, excepting only Florida, Alabama, and Nevada, levy estate, inheritance, legacy, or succession taxes payable out of estates of decedents, and did so at the time of the passage of the said 'Revenue Act of 1926,' and by reason of its constitutional provision herein quoted it is impossible for the State of Florida to place its citizens on an equality with citizens of other States and the District of Columbia in respect to the operation of the said 'Revenue Act of 1926.' "

Paragraph 8, Bill of Complaint.

7. "That the State of Florida is advised and believes that the said 'Revenue Act of 1926,' in so far as it undertakes by Section 301 to make a levy on the estates of decedents is in violation of Section 8 of Article I of the Constitution of the United States which requires that 'all duties, imposts, and excises shall be uniform throughout the United States.' "

Paragraph 9, Bill of Complaint.

If the State of Florida is to prevail in this case then the following questions must be answered in the affirmative:

- 1st. Is the Estate Tax levied by the Revenue Act of 1926 an excise tax?

- 2nd. Is not the Estate Tax levied by the Revenue Act of 1926 unconstitutional in that it is not uniform throughout the United States?
- 3rd. Has the State of Florida a right in her sovereign capacity to question and attack the constitutionality and validity of the Estate Tax levied and imposed by the Revenue Act of 1926?

I. IS THE ESTATE TAX AN EXCISE TAX?

It has been decided by the Supreme Court of the United States that estate taxes, or taxes of this class, are excise taxes.

SCHOLEY *v.* REW, 90 U. S. 331.

KNOWLTON *v.* MOORE, 178 U. S. 41.

NEW YORK TRUST CO. *v.* EISNER, 256 U. S. 345.

II. DOES THE ESTATE TAX LEVIED BY THE REVENUE ACT OF 1926 MEET THE REQUIREMENTS OF SECTION 8 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES REQUIRING THAT EXCISE TAXES SHALL BE UNIFORM THROUGHOUT THE UNITED STATES?

Section 8 of Article I of the Constitution provides:

“* * * all Duties, Imposts and Excises shall be uniform throughout the United States.”

The United States Supreme Court in the HEAD MONEY CASES, reported in 112 U. S. 580, at page 594, holds:

“The uniformity here prescribed has reference to the various localities in which the tax is intended to operate. ‘It shall be uniform throughout the United States.’ Is the tax on tobacco void, because in many of the States no tobacco is raised or manufactured? Is the tax on distilled spirits void, because a few States pay three-fourths of the revenue arising from it?

“The tax is uniform when it operates with the same *force* and *effect* in every place where the subject of it is found. * * *

In the case of *KNOWLTON v. MOORE*, reported in 178 U. S. 41, this Court in giving a history of the adoption and analysis of the Constitution came to this conclusion and held (at page 106):

“* * * By the result then of an analysis of the history of the adoption of the Constitution it becomes plain that the words ‘uniform throughout the United States’ do not signify an intrinsic but simply a geographic uniformity.”

This Court, in the case of *KNOWLTON v. MOORE supra*, in summing up, quoted from comments made by Luther Martin, Attorney General of Maryland, who was also a member of the Constitutional Convention, in the following words, (178 U. S. 41, at page 106):

“‘Though there is a provision that all duties, imposts and excises shall be uniform—that is, *to be laid to the same amount on the same articles in each State*—yet this will not prevent Congress from having it in their power to cause them to fall very unequally and much heavier on some States than on others, because these duties may be laid on articles but little or not

at all used in some other States, and of absolute necessity for the use and consumption in others; * * * ”

Under these authorities it is clear that this estate tax or excise tax must be the same on the subject taxed, and must have the same *force* and *effect* on such subject “throughout the United States.”

Does the estate or excise tax provision of the Revenue Law of 1926 meet and come up to this *uniformity* requirement of the Constitution? It does not.

It is true that the tax is levied uniformly, but the provision in Section 301, paragraph (B) of the Revenue Act of 1926, that:

“The tax (not the estate in arriving at the net estate to be taxed) imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by Section 304.”

absolutely destroys the uniformity required by the Constitution.

The United States is sovereign within the sphere of the powers granted to it by the Constitution. Each of the States is sovereign and independent of every other State outside of the powers delegated to it by the Constitution of the United States. The Constitution of the United States is a solemn compact between the several States and between the States and the United States.

The Constitution of the United States never contemplated that Congress could pass an excise tax law the uniformity of which would depend entirely upon affirmative action upon the part of the several States to make it uniform in *force* and *effect*. The Constitution requires that an excise tax law, within itself, shall be uniform throughout the United States.

Section 8 of Article I of the Constitution provides:

“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”

The Estate Tax provision of the Revenue Act of 1926 was not passed for this purpose, but was passed solely for the purpose of coercing States into passing or adopting Estate or Inheritance tax laws.

If Congress could rebate 80 per centum of this tax then Congress could just as legally rebate 100 per centum of the tax. If the States do what Congress by this estate tax law is trying to force them to do, it would be possible to make a 100 per centum rebate and the State not imposing a tax of this kind would be the only State paying to the Federal Government an estate tax.

In construing statutes, the United States Supreme Court has held:

“In the exposition of statutes, the established rule is that the intention of the law-maker is to be deduced from a view of the whole statute, and every material part of the same; * * *”

KOHLSAAT *v.* MURPHY, 96 U. S. 153, at page 159.

“That a law is the best expositor of itself; that every part of an Act to be taken into view, for the purpose of discovering the mind of the Legislature, * * * are among those plain rules laid down by common sense for the exposition of statutes, * * *”

PENNINGTON *v.* COXE, 6 U. S. 33, at page 52.

“* * * debates in Congress are not appropriate sources of information from which to discover the meaning of a statute passed by that body, * * *”

DUNLAP *v.* UNITED STATES, 173 U. S. 65, at page 75.

“What individual Senators or Representatives may have urged in debate, in regard to the meaning to be given to a proposed constitutional amendment, or bill or resolution, does not furnish a firm ground for its proper construction, * * *”

MAXWELL *v.* DOW, 176 U. S. 581, at page 601.

In the case of DUPLEX COMPANY *v.* DEERING, 254 U. S. 443, text 474-5, this Court held:

“By repeated decisions of this Court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making

body. *ALDRIDGE v. WILLIAMS*, 3 How. 9, 24; *UNITED STATES v. UNION PACIFIC R. R. CO.*, 91 U. S. 72, 79; *UNITED STATES v. TRANS-MISSOURI FREIGHT ASSOCIATION*, 166 U. S. 290, 318. But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure. *BINNS v. UNITED STATES*, 194 U. S. 486, 495. And this has been extended to include explanatory statements in the nature of a supplemental report made by the committee member in charge of a bill in course of passage. *BINNS v. UNITED STATES* *supra*; *PENNSYLVANIA R. R. CO. v. INTERNATIONAL COAL CO.*, 230 U. S. 184, 198-9; *UNITED STATES v. COCA COLA CO.*, 241 U. S. 265, 281; *UNITED STATES v. ST. PAUL, MINNEAPOLIS & MANITOBA RY. CO.*, 247 U. S. 310, 318."

The same rule is held in the case of *UNITED STATES v. ST. PAUL M. & M. RY. CO.*, 247, U. S. 310.

"UNION CALENDAR NO. 1

(Report No. 1)

69TH CONGRESS	}	HOUSE OF REPRESENTA-
1st Session			TIVES

THE REVENUE BILL OF 1926

"December 7, 1925.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

"MR. GREEN, of Iowa, from the Committee on Ways and Means, submitted the following

REPORT

(To accompany H. R. 1)"

On pages 14 and 15 of the above report we find, from Mr. Green, Chairman, the following:

"A very important change was also made in the application of the estate taxes. Under the present law a credit is allowed upon these taxes of the amount of any inheritance or estate tax paid to any State, up to 25 per cent. of the Federal tax. In order to give the various States full freedom to make use of this tax, the committee decided to extend the credit which might be so allowed up to 80 per cent. of the Federal tax. The several States, by the use of this provision, will be enabled to make use of the inheritance tax without additional cost to its citizens. The extension in the use of this provision

will probably be slow, but eventually it will greatly affect the Federal receipts from this tax. A further amendment is made to this provision of existing law to the effect that the credit shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return. So much of a State inheritance or other such tax as is paid but subsequently, within such four years, refunded, is not, of course, 'paid' within the meaning of this provision.

"The estate tax, under the bill, will go in force on the enactment of this bill, but as but few estates of the size which are affected by the Federal tax are settled within the first year, the loss in receipts during the calendar year 1926 will not be large enough to require it to be taken into consideration. The loss during the calendar year 1927 will probably be from ten to twenty million dollars. Thereafter the annual loss will continue to increase, as advantage is taken of the 80 per cent. credit, and in a few more years it is probable that the annual return to the Government under the estate tax will not exceed \$50,000,000. The returns may even be less than this amount. There is no way of making any accurate determination at this time, but it is believed the loss on the estate taxes, which in the final outcome may amount to as much as \$70,000,000, will be postponed for so long a period that the natural increase of the Federal revenues will make up for it."

In the Congressional Record of December 12th, 1925, on page 316, we find Motion by Mr. Green of Iowa, Chairman of Committee on Ways and Means of the House, in the following language:

"Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 1, the revenue bill."

In this Committee of the whole House we find expressions as to the purpose of the Estate Tax provision of this bill as follows:

On page 319, Congressional Record, December 12th, 1925, Mr. Greenwood, Member from Indiana, expresses his views and the purposes of the Estate Tax provision as follows:

"Our President, in his message, said that the Federal Government ought to reduce the rate on inheritances, with the idea eventually of withdrawing from this field of taxation and giving the States an opportunity to equalize the law. Who is so optimistic as to believe that the States will ever bring about a uniformity of inheritance tax laws? The demands from Indiana are different from those of Florida; and when shall we ever expect to see Florida consult with Indiana as to the making of inheritance tax laws? Never. We have 48 States and 48 different systems of taxation; and my opinion is that as long as we have as many States we will have that many different systems and different rates. The States have had an opportunity; and the only way to bring about uniformity of inheritance taxes is through the supervision and influence of collection by the Federal Government.

"I would be in favor of changing the proposed measure from 80 per cent. rebate to the State, to a 50 50 division, on the theory that the collection of inheritance taxes should be divided

equally and that both State and Nation have equal power and equal rights to levy this class of taxation.

“Wealth is no longer accumulated within State lines but through channels of interstate commerce—business interests overlapping from State to State. The immense fortunes so accumulated in no State can reach out and tax intangible property; but under a Federal inheritance tax law it will become uniform, and the conflict between the various States will be eliminated and the opportunity of men of wealth to make a fortune in one State and withdraw and take up their residence in another State, as they now have the opportunity to do, will be eliminated.”

On page 325, Congressional Record, House, same date, Mr. Deal, Member from Virginia, expresses the purpose of the Estate Tax provision as follows:

“Mr. Chairman, there is another provision in this bill with which I cannot agree, and that is the one that provides for the return of 80 per cent. of the taxes collected upon inheritances by the various States. I do not object to an inheritance tax law properly adjusted, but the purpose of this provision, it has not been denied, is to coerce and force certain sovereign and independent States into measures that may be desired by this Congress. In other words, the taxing power is being used to coerce sovereign States, from whom this Congress received whatever power it may possess. If this can be done in one instance, then no State will be sovereign or supreme, because Congress, by one device or another, may enact laws that will force

every State into subserviency to the centralized Government in Washington. I believe that unconstitutional. When Congress undertook to prevent shipment interstate of goods in the manufacture of which child labor was used, the Supreme Court held it unconstitutional on the ground that it interfered with the State in its sovereign rights to enact child-labor laws, hence the resolution submitted for an amendment to the Federal Constitution giving to Congress the right to enact child-labor laws. The American people are to be congratulated that our State assemblies by an overwhelming majority have refused to surrender this power to Congress."

On pages 330, 331 and 332, Congressional Record, House, December 12th, 1925, Mr. Lozier, Member from Missouri, expresses the purposes of the Estate Tax provision as follows:

"Under the Revenue Act of 1924, estates netting less than \$50,000 are not subject to an estate tax. This same exemption is carried in the proposed bill. The maximum rate, applicable to the higher brackets, under the present law is 40 per cent., but the tax is not unduly excessive on estates netting \$500,000 or less. Under the pending bill the maximum rate applicable to the higher brackets has been reduced to 20 per cent. Under the present law a credit is allowed on estate taxes of the amount of any inheritance or estate tax paid to any State up to 25 per cent. of the Federal tax. Under the pending bill a credit up to 80 per cent. of the Federal tax is allowed on account of inheritance or estate taxes paid to any State. As many States impose heavy estate or inheritance taxes, this pro-

vision in the pending bill practically wipes out Federal estate or inheritance taxes, especially in States that impose substantial taxes on estates or inheritances. These provisions in the pending bill will, in my opinion, give momentum to the Nation-wide movement to establish a uniform and equitable estate tax system which will prevent overlapping and duplicate taxation, and if inheritance taxes are to be levied by States, such levies shall be uniform throughout the Nation. Until the States agree upon a uniform system for the imposition of taxes on the transmission of estates, the Federal Government should not retire, even temporarily, from the estate-tax field, although the pending measure, in its last analysis, practically abolishes Federal estate taxes as a substantial source of revenue. Inasmuch as all estates netting \$50,000 or less are exempt under the pending bill, and estates of \$50,000 to \$100,000 are taxed only a nominal sum, and a credit to the extent of 80 per cent. of the Federal taxes is allowed for payment made on account of State inheritance taxes, very few persons in my district or State would be interested or affected by this provision (except that it materially reduces all inheritance taxes), as the bill in its practical operation imposes only a nominal tax except when applied to great fortunes included within the high brackets."

CONGRESSIONAL RECORD, HOUSE, Dec. 12th, 1925, page 330.

"May I suggest another reason why our Federal estate taxes should be retained? Not all of the States impose inheritance or estate taxes.

If the Federal estate tax law were repealed, estates and inheritances would be subject to taxation in some States and free from taxation in others. Many citizens of a State where inheritances are taxed would remove to States where there are no estate or inheritance taxes. To induce men of wealth to change their domicile, States would abolish estate and inheritance taxes. Reduced to its last analysis, this migration of capital if not checked will ultimately result in the repeal of all State laws taxing inheritances, because no State will hold to a tax system that drives its citizens and capital to other States. The competition between States for capital would be so strenuous that ultimately all State inheritance tax laws would be abrogated and estate taxes levied only by the Federal Government.

“Florida in November, 1924, adopted a constitutional amendment prohibiting estate and inheritance taxes in that State. This is an open bid for population and capital. By this change in her organic law Florida seeks to induce a multitude of capitalists to give up their citizenship in their home States and become citizens of Florida. Nevada has abolished inheritance taxes, effective July 1, 1925. Since the adoption of its present constitution in 1900, inheritance and estate taxes have been abolished in Alabama. Estate and inheritance taxes are not levied in the District of Columbia. In California and Georgia there is considerable agitation looking to the abolition of estate and inheritance taxes.

“If the Federal estate tax is repealed, this movement will probably extend to all the States. These exemption laws appeal to many men of

great wealth who habitually evade taxation and who covet the privilege of transmitting their vast estates to their descendants free from 'death duties' or succession taxes. These men in ever-increasing numbers have found refuge from taxation by concentrating their wealth in tax-free bonds; and if the Federal estate tax is abrogated these men will soon become citizens of a State where all their fortunes, including their tax-free bonds, are free from estate or succession taxes."

CONGRESSIONAL RECORD, HOUSE, Dec. 12, 1925,, page 331.

"An amendment to our present revenue law has been suggested providing that on all Federal estate taxes a credit shall be *allowed for all inheritance or estate taxes paid to the States*. I think this goes too far. The ultimate effect of such an amendment would, in my opinion, be to eliminate the Federal Government from the field of estate or inheritance taxes, because the States would in all probability establish an inheritance-tax rate as high as the Federal rates at the present time. However, it would at least result in uniformity. Each State would be free to levy their inheritance taxes up to the rate provided under the Federal revenue laws. In all States where the State rate equals the Federal rate the Federal Government would receive no taxes, but in States like Florida and Alabama, where no State inheritance taxes are levied, the Federal Government would collect Federal estate taxes at the rate prescribed by the Federal statute. *In this way the capitalist who moves to Florida*

or Alabama to avoid inheritance or estate taxes would escape State levies, but would be compelled to pay the Federal Government an estate tax equal to the combined State and Federal tax levied in other States. There is some argument in favor of an arrangement of this character, but I think the ultimate effect would be to deprive the Federal Government of all inheritance taxes. While so far estate taxes have constituted but an insignificant portion of our Federal revenues, the Government might be justified in making liberal concessions to the States in order to promote uniformity in our tax laws and to avoid overlapping or multiple taxation."

CONGRESSIONAL RECORD, HOUSE, Dec. 12, 1925, p. 332.

On page 334, Congressional Record, House, same date, Mr. Gilbert, Member from Kentucky, expresses the purpose of the Estate Tax provision as follows:

"The next unwise and unjust principle promoted by the bill is the reduction of national inheritance taxes and the holding out to the States of a hope that the National Government will eventually withdraw from the field entirely.

"I recognize that the country has been swamped with literature to this effect; that the States have been urged to vehemently insist on this policy; and that the President, always assenting to what plutocracy wants, are all, in one loud refrain, clamoring for the repeal of the Federal inheritance taxes. Nine out of 10 whom you casually meet that express themselves on the subject do so with these words:

'It is a capital tax and the States need that revenue.' The same sentence coming uniformly from such a large number would indicate a common inspiration. That it is a capital tax does not state any reason why it is not a just tax. Taxes, with but few exceptions, are all capital taxes, and it is only by a national inheritance tax that most of the States can obtain any benefit from any inheritance tax. In its practical application, regardless of the theory involved, an inheritance tax is essentially and necessarily a national tax. Great wealth fears this tax above all others. It is one tax that can not in any part be passed on to the consumer. The owners of great fortunes know the State is powerless to compel a just and accurate accounting. Kentucky, with its Harkness estate, and too many other States have had their scandals in the futile attempt.

"So long as the States have full jurisdiction—and there are different rates in the several States—wealth can and will select that State for its legal residence where the tax rate is least, whether it is in fact its actual residence or not, and can build a house with a small part of the fortune saved, and visit it once a year, and call it home. The scramble among the States for these concessions will precipitate an undesirable contest. Witness Florida at the present time in its bid for residence through taxable concessions."

On page 336, Congressional Record, House, same date, Mr. Dennison, Member from Illinois, expresses the purpose of the Estate Tax provision as follows:

"In conclusion, I wish to add that I think it is the right of each State to maintain its rev-

enue system to suit the wishes of the majority of the people of that State, and it is no business of the Federal Government what system of taxes the different States choose to rely upon. If a majority of the people of the State of Florida, or any other State, do not want an inheritance tax or an income tax and can maintain their Government from other sources of taxation, they have a perfect right to do so, and we who represent the Federal Government have no right to question their motives or purposes in doing so or to attempt by any Federal legislation to coerce them to change their system. If the system of taxes approved by the people of Florida is not wise and just, natural economic conditions in the due course of time will compel them to change their system; but it is no business of the Federal Government to undertake that task. I believe the Federal Government should so adjust its tax system that the burden of its taxes may rest equally upon the people of all the States alike without regard to the revenue systems that may have been adopted by the different States themselves. But the Federal Government is still under the burdens of heavy expenditures resulting from the war and will be for many years to come. And I find no particular fault with the estate tax provision of the pending bill and will support it until such time as the Federal Government no longer needs it and can leave that source of taxation to the different States."

THIS THOUGHT

Each State, to secure justice, domestic tranquility, common defence, general welfare and the blessings of

liberty, surrendered to the Federal Government certain rights and powers. Each State surrendered any right it had or might have to right wrongs against it or to redress its own grievances. A tribunal for this purpose was established. It is as much the duty of the United States to protect the rights and sovereignty of any one State as against every other State and as against the United States as it is the duty of the United States to protect the sovereignty of the United States or any number of States against the world. In entering the Union, each State was insured equality, equal protection and equal rights.

On page 348, Congressional Record, House, December 12, 1925, Mr. Frear, Member from Wisconsin, expresses himself as follows:

“Mr. Mellon’s estate will pay 2 per cent. on that amount to the State of Pennsylvania. That is the maximum tax and the only estate tax in the Keystone State. The miner in Pennsylvania who receives \$500 has an exemption of \$250, and on the other \$250 of his estate the miner’s heirs pay 2 per cent. The man who has \$300,000,000 pays the same rate of 2 per cent., or \$6,000,000. Now a credit up to 80 per cent. to be given to those paying State estate taxes has been explained here. I think it is a good provision. You have got at least to admit one thing, and I think Judge Green will do so, that, although I am not imperatively needed on the committee now, I drew the credit amendment for 25 per cent. to be extended to those paying State estate taxes. My State has an inheritance tax, and it seemed to be a proper thing, and it was between Ramseyer, who proposed a collection and refund, and my amendment. You accepted my amendment that gives a credit of 25

per cent. I believe that 80 per cent. is a good thing. You can put it at 100 if you want to do so without objection, unless collection charges are important, for States are bidding against each other in exempting taxes. Some people from my own home town have gone to Florida. They said they did so to avoid the State inheritance tax, and if that occurred from a little town away up 1,500 miles from Florida, what must it be from the rest of the country? We are trying to prevent tax dodging by this credit to States of State estate taxes. We are not trying to prejudice Florida at all, as stated here by Florida Members. If Florida wants to permit people to come in to that State without paying an inheritance tax, all right; but we say by this provision that 45 of the States should not be drawn upon so that their tax dodgers will locate in this one State."

It will appear on the face of the Estate Tax provision, and from a history of its passage, and from the numerous expressions from Members of Congress appearing in the Congressional Record of December 12, 1925, (some quoted and many not quoted), that the purpose of this provision is to force uniformity of estate, inheritance or succession taxes as between the several States.

For the purpose of computing the taxes under the Estate Tax provision a net taxable estate of \$1,000,000.00 would pay a Federal tax of \$48,500. The same taxable estate in a State paying an estate, inheritance or succession tax equal to or more than 80 per cent. of the Federal estate tax would only have to pay \$9,700.00. The same net taxable estate in Florida would have to pay the Federal Government \$48,500.00.

If this unholy Estate Tax provision of the Revenue Law of 1926 can for any reason be held constitutional

and uniform, then the very principles for which the framers of the Constitution insisted on and fought for can be nullified and set at naught.

In the case of *POLLOCK v. FARMERS LOAN & TRUST CO.*, 157 U. S. 429 (quoting from text, page 582) this Court held:

“Nothing can be clearer than that what the Constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any State through a majority made up from the other States. It is true that the effect of requiring direct taxes to be apportioned among the States in proportion to their population is necessarily that the amount of taxes on the individual taxpayer in a State having the taxable subject-matter to a larger extent in proportion to its population than another State has, would be less than in such other State, but this inequality must be held to have been contemplated, and was manifestly designed to operate to restrain the exercise of the power to direct taxation to extraordinary emergencies, and to prevent an attack upon accumulated property by mere force of numbers.”

The provisions of the Constitution that “excise” taxes should be uniform throughout the United States was also made to guard against abuse by force of numbers.

The Constitution guarantees to each State its sovereignty, and the right to manage its internal affairs without interference from other States.

Again, in the case of *POLLOCK v. FARMERS LOAN & TRUST CO.*, 157 U. S. 429 (quoting from text, page 560) this Court held, citing *LANE v. OREGON*, 7 Wall. 71, 76:

"The people of the United States constitute one nation, under one Government, and this Government, within the scope of the powers with which it is invested, is supreme. On the other hand, the people of each State compose a State, having its own Government, and endowed with all the functions essential to separate and independent existence. The States disunited might continue to exist. Without the States in union there could be no such political body as the United States. Both the States and the United States existed before the Constitution. The people, through that instrument, established a more perfect union by substituting a national government, acting, with ample power, directly upon the citizens, instead of the Confederate Government, which acted with powers, greatly restricted, only upon the States. But in many articles of the Constitution the necessary existence of the States, and, within their proper spheres, the independent authority of the States, is distinctly recognized. To them nearly the whole charge of interior regulation is committed or left; to them and to the people all powers not expressly delegated to the national government are reserved. The general condition was well stated by Mr. Madison in the *Federalist*, thus: 'The Federal and State Governments are in fact but different agents and trustees of the people, constituted with different purposes.' Now, to the existence of the States, themselves necessary to the existence of the

United States, the power of taxation is indispensable. It is an essential function of government. It was exercised by the colonies; and when the colonies became States, both before and after the formation of the confederation, it was exercised by the new governments. Under the Articles of Confederation the Government of the United States was limited in the exercise of this power to requisitions upon the States, while the whole power of direct and indirect taxation of persons and property, whether by taxes on polls, or duties on imports, or duties on internal production, manufacture, or use, was acknowledged to belong exclusively to the States, without any other limitation than that of non-interference with certain treaties made by Congress. The Constitution, it is true, greatly changed this condition of things. It gave the power to tax, both directly and indirectly, to the national government, and, subject to the one prohibition of any tax upon exports and to the conditions of uniformity in respect to indirect and of proportion in respect to direct taxes, the power was given without any express reservation. On the other hand, no power to tax exports, or imports, except for a single purpose and to an insignificant extent, or to lay any duty on tonnage, was permitted to the States. In respect, however, to property, business, and persons, within their respective limits, their power of taxation remained and remains entire. It is indeed a concurrent power, and in the case of a tax on the same subject by both governments, the claim of the United States, as the supreme authority, must be preferred; but with this qualification it is absolute. The extent to which it shall be exercised, the subjects upon

which it shall be exercised, and the mode in which it shall be exercised, are all equally within the discretion of the Legislatures to which the States commit the exercise of the power. That discretion is restrained only by the will of the people expressed in the state constitutions or through elections, and by the condition that it must not be so used as to burden or embarrass the operations of the national government. There is nothing in the Constitution which contemplates or authorizes and direct abridgment of this power by national legislation. To the extent just indicated it is as complete in the States as the like power, **WITHIN THE LIMITS OF THE CONSTITUTION**, is complete in Congress."

Each State has to raise a definite and sufficient amount of revenue or funds to pay the legitimate expenses of the State Government. Each State is supposed to raise this revenue from the sources and in the manner most advantageous to itself, its citizens and to its business. These necessary taxes are bound to come from the earnings of its citizens in some one form or another. One State may deem it to its advantage to raise a large part of this revenue from death duties, thus relieving other classes of its property and business from the burden. Another State may deem it to its advantage to raise its revenues from other sources than death duties. Yet each State imposes its burden on the earning power of its citizens.

States raise the necessary revenue to pay the expenses of their respective State Governments. They raise this revenue in the manner they deem to the best interests of the State. Florida raises her revenue from other sources than death duties and income taxes. A majority of the States have combined and intend to force the

State of Florida to pay death duties, or estate taxes, for the support of the United States Government, when these same death duties or estate taxes paid by other States go to pay the expenses of State Governments. The United States Constitution never contemplated such a condition. And no person, whether they be fair-minded or not, can so construe it.

We now come to the third question:

III. HAS THE STATE OF FLORIDA A RIGHT IN HER SOVEREIGN CAPACITY TO QUESTION AND ATTACK THE CONSTITUTIONALITY AND VALIDITY OF THE ESTATE TAX LEVIED AND IMPOSED BY THE REVENUE ACT OF 1926?

In presenting the rights and grievances of the State of Florida in this matter, and the right of the State of Florida to a redress of these grievances, and to file her Bill of Complaint, calling upon this honorable Court for relief, no other source or tribunal being provided or available to her as long as the Union of the States as provided and intended obtains, it might be appropriate and wise for all of us to keep in mind some of the fundamental truths and principles upon which the Government and the Union of States is founded.

"THE BOSTON TEA PARTY."

We take it that there are very few Americans, in any walk of life, and none of any nationality in the world who are enlightened and have even a cursory knowledge of the history of nations, who do not know the historical event designated by the title "The Boston Tea Party,"

and the significance of this event. An unjust tax precipitated "The Boston Tea Party." "The Boston Tea Party" precipitated a revolution, a war which resulted in the independence of the Colonies—thirteen separate and independent sovereignties.

On July 4th, 1776, the Declaration of Independence was agreed to and signed and was designated "The Unanimous Declaration of the Thirteen States of America," and is historically known as the "Declaration of Independence." I have never heard the principles and pronouncements contained in the Declaration of Independence questioned or impugned by anyone. In the Declaration of Independence we find these pronouncements:

"When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and Nature's God entitle them, a decent respect to the opinion of mankind requires that they should declare the causes which impel them to the separation.

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive to these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem

most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.”

This Great Instrument then proceeds to enumerate the grievances of the Colonies. Among these grievances we find:

“For imposing taxes on us without our consent.”

For all purposes, every tax legally imposed is with our consent. Every tax illegally imposed is without consent.

After the Colonies declared their independence the Confederation of States was formed. On the 15th day of November, 1777, the Articles of Confederation were agreed to. Article II of the Articles of Confederation provides:

“Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.”

Paragraph 2 of Article VI of the Articles of Confederation provides:

“No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.”

Paragraph 5 of Article VI of said Articles of Confederation provides:

“No State shall engage in any war without the consent of the United States * * * nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States. * * *”

Now, the several Colonies, in entering into the Confederation of States, surrendered their right to settle their differences by diplomacy or by force, but appreciating that such differences and disputes might arise they provided for their settlement by a tribunal provided for in Article IX of the Articles of Confederation as follows:

“The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that

hereafter may arise between two or more States concerning boundary, jurisdiction or *any other cause whatever*, * * *

and then provided that machinery and manner of selecting the commission or tribunal to try and determine such disputes.

The Constitution of the United States supplanted the Articles of Confederation.

The Preamble to the Constitution of the United States clearly sets forth the purposes of the Constitution. It recites:

“WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, INSURE DOMESTIC TRANQUILITY, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.”

The Constitution provides for One Supreme Court. This Court, among other things, was clothed with jurisdiction to try and determine differences and disputes between States, and given original jurisdiction in all cases in which a State shall be a party.

Article X of the Amendments to the Constitution of the United States provides:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

In line with this provision of the Constitution, the Supreme Court of the United States has held in the case of *PRIGG v. PENNSYLVANIA*, 16 Pet. 539, that:

“The legislative power of the State is not derived from the Federal Constitution nor from any Act of Congress. The powers of a State are exercised independently.”

The Supreme Court of the United States has also held in the case of *BRISCOE v. BANK OF KENTUCKY*, 11 Pet. 257, at page 316, that:

“The Federal Government is one of delegated powers. All powers not delegated to it, or inhibited to the States, are reserved to the States, or to the people.”

There was a like holding in the case of *MARTIN v. HUNTER*, 1 Wheat. 304.

In the case of *DODGE v. WOOLSEY*, 18 How. 331, this Court held that:

“Each Government, State and Federal, is supreme within its own sphere.”

In the case of *WESTON v. CHARLESTON*, 2 Pet. 449, at page 465, this Court held:

“* * * ‘the States have no power, by taxation, or otherwise, to retard, impede, burden, or in any manner control, the operations of the Constitutional laws enacted by Congress, to carry into execution the powers vested in the general government.’ * * *”

We submit that the converse of this proposition is equally true: That the Federal Government has no power by taxation or otherwise to retard, impede, further or in any manner control the internal affairs of the State in any matter not in conflict with the powers delegated to the United States by the Federal Constitution or inhibited to the State by the Federal Constitution.

We urgently call this Court's attention to the sound and healthy pronouncement made by this Court in the case of *TEXAS v. WHITE*, 7 Wall. 700, 5th headnote on page 700, when the Court held:

“* * * the preservation of the States, and the maintenance of their governments are as much within the design and care of the Constitution, as the preservation of the Union and the maintenance of the National Government.”

The Estate Tax provision of the Revenue Act was not passed for the purpose of raising Federal revenue. It was directed primarily at the State of Florida. It was not passed to obtain revenue from the tax-paying estates in Florida, but was passed to nullify a constitutional provision of the State.

In the true sense of the word, the Estate Tax provision is not a Federal law. Congress cannot pass a law in direct violation of the provisions of the Constitution of the United States, and cannot pass a *law* outside of the powers delegated by the Constitution. This Estate Tax provision is the act of Members of Congress from a majority of the States, attacking the sovereignty of one State.

In the case of *POLLOCK v. FARMERS LOAN & TRUST CO.*, *supra* (page 554 text) this Court held:

"Since the opinion in *MARBURY v. MADISON*, 1 Cranch, 137, 177, was delivered, it has not been doubted that it is within judicial competency, by express provisions of the Constitution or by necessary inference and implication, to determine whether a given law of the United States is or is not made in pursuance of the Constitution, and to hold it valid or void accordingly. 'If,' said Chief Justice Marshall, 'both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law; the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.' And the Chief Justice added that the doctrine 'that Courts must close their eyes on the Constitution, and see only the law,' 'would subvert the very foundation of all written constitutions.' Necessarily the power to declare a law unconstitutional is always exercised with reluctance; but the duty to do so, in a proper case, cannot be declined, and must be discharged in accordance with the deliberate judgment of the tribunal in which the validity of the enactment is directly drawn in question."

and in the same case held further (157 U. S. 429, text 566):

"* * * This Constitution defines the extent of the powers of the general government. If the general legislature should at any time overlap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Con-

stitution does not authorize, it is void; and the judicial power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void.' 2 Elliott, 191, 192, 196."

and in the same case held further (page 584 text):

"* * * 'The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, "reserved," are as independent of the general government as that government within its sphere is independent of the State.' "

This Court took original jurisdiction in the case of the State of Minnesota against the Secretary of the Interior and the Commissioner of the General Land Office, *MINNESOTA v. HITCHCOCK*, 185 U. S. 373. In that case this Court held (at pages 385-6):

" 'It is, however, said that the words last quoted refer only to suits in which a State is party, and in which, also, the opposite party is another State of the Union or a foreign State. This cannot be correct, for it must be conceded that a State can bring an original suit in this Court against a citizen of another State. *WISCONSIN v. PELICAN INS. CO.*, 127 U. S. 265, 287. Besides, unless a State is exempt altogether from suit by the United States, we do not

perceive upon what sound rule of construction suits brought by the United States in this Court—especially if they be suits the correct decision of which depends upon the Constitution, laws or treaties of the United States—are to be excluded from its original jurisdiction as defined by the Constitution. That instrument extends the judicial power of the United States “to all cases,” in law and equity, arising under the Constitution, laws and treaties of the United States, and to controversies in which the United States shall be a party, and confers upon this Court original jurisdiction “in all cases” “in which a State shall be a party,” that is, in all cases mentioned in the preceding clause in which a State may, of right, be made a party defendant, as well as in all cases in which a State may, of right, institute a suit in a court in the United States. The present case is of the former class. We cannot assume that the framers of the Constitution, while extending the judicial power of the United States to controversies between two or more States of the Union and between a State of the Union and foreign States, intended to exempt a State altogether from suit by the General Government. They could not have overlooked the possibility that controversies, capable of judicial solution, might arise between the United States and some of the States, and that the permanence of the Union might be endangered if to some tribunal was not entrusted the power to determine them according to the recognized principles of law. And to what tribunal could a trust so momentous be more appropriately committed than to that which the people of the United States, in order to form a more perfect

Union, establish justice and insure domestic tranquility, have constituted with authority to speak for all the people and all the States, upon questions before it to which the judicial power of the nation extends? It would be difficult to suggest any reason why this Court should have jurisdiction to determine questions of boundary between two or more States, but not jurisdiction of controversies of like character between the United States and a State.' (p. 643.)

"While the United States as a Government may not be sued without its consent, yet with its consent it may be sued, and the judicial power of the United States extends to such a controversy. Indeed, the whole jurisdiction of the Court of Claims rests upon this proposition.

"It may be said that the United States is not named as defendant, and therefore it cannot be considered a party to the controversy. It is true that it was at one time held that the Eleventh Amendment to the Constitution of the United States, which provides that 'the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State,' was applicable only to cases in which the State was named in the record as a party defendant. *OSBORN v. UNITED STATES BANK*, 9 Wheat. 739. But later rulings have modified that decision, and held that the amendment applies to any suit brought in name against an officer of the State, when 'the State, though not named, is the real party against which the relief is asked, and the judgment will operate.' *IN RE AYERS*, 123 U. S. 443. Of course, this statement has no reference to and does not include those cases in

which officers of the United States are sued, in appropriate form, to compel them to perform some ministerial duty imposed upon them by law, and which they wrongfully neglect or refuse to perform. Such suits would not be deemed suits against the United States within the rule that the Government cannot be sued except by its consent, nor within the rule established in the *AYERS* case."

This Court took original jurisdiction in the case of *MISSOURI v. ILLINOIS & CHICAGO DRAINAGE DISTRICT*, 180 U. S. 208. In that case the Court held (at page 236):

"But in *DEBS, PETITIONER*, 158 U. S. 564, involving a case in the Circuit Court, in which the United States had sought relief by injunction, it was observed: 'That while it is not the province of the Government to interfere in any mere matter of private controversy, between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever, the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the nation, and concerning which the nation owes its duty to all the citizens of securing to them their common rights, then the mere fact that the Government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts or prevent it from taking measures therein to fully discharge those Constitutional duties.' "

and further held (180 U. S. 208, pages 238, 239 and 240):

“* * * From the language of the Constitution, and from the cases in which that language has been considered, what principles may be derived as to the nature and extent of the original jurisdiction of this Court in controversies between two or more States?

“From the language, alone considered, it might be concluded that whenever, and in all cases where one State may choose to make complaint against another, no matter whether the subject of complaint arises from the legislation of the defendant State, or from acts of its officers and agents, and no matter whether the nature of the injury complained of is to affect the property rights or the sovereign powers of the complaining State, or to affect the rights of its citizens, the jurisdiction of this Court would attach.

“Chief Justice Marshall in the case of *COHENS v. VIRGINIA*, 6 Wheat. 264, 392, said:

“‘The Constitution gives the Supreme Court original jurisdiction in certain enumerated cases, and gives it appellate jurisdiction in all others. Among those in which jurisdiction must be exercised in the appellate form are cases arising under the Constitution and laws of the United States. These provisions of the Constitution are equally obligatory, and are to be equally respected. If a State be a party, the jurisdiction of this Court is original; if the case arise under a constitution or a law, the jurisdiction is appellate. But a case to which a State is a party may arise under the Constitution or a law of the United States. What rule is applicable to such a case? What, then, becomes the duty of the Court? Certainly, we think, so to construe the Constitution as to give effect to

both provisions, as far as possible to reconcile them, and not to permit their seeming repugnancy to destroy each other. We must endeavor so to construe them as to preserve the true intent and meaning of the instrument.

“ ‘In one description of cases the jurisdiction of the court is founded entirely on the character of the parties; and the nature of the controversy is not contemplated by the Constitution. The character of the parties is everything, the nature of the case nothing. In the other description of cases the jurisdiction is founded entirely on the character of the case, and the parties are not contemplated by the Constitution. In these the nature of the case is everything, the character of the parties nothing. When, then, the Constitution declares the jurisdiction, in cases where a State shall be a party, to be original, and in all cases arising under the Constitution or a law to be appellate, the conclusion seems irresistible that its framers designed to include in the first class those cases in which jurisdiction is given, because a State is a party; and to include in the second those in which jurisdiction is given, because the case arises under the Constitution or a law.’ ”

“The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases directly affecting the property rights and interests of a State. But such cases manifestly do not cover the entire field in which such controversies may arise, and for which the Constitution has provided a remedy; and it would be objectionable, and indeed, impossible, for the court to anticipate by definition what

controversies can and what cannot be brought within the original jurisdiction of this court."

and further held (180 U. S. 208, page 241):

"An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this court at the suit of the State of Missouri. It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant State. But it must surely be conceded that, if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them. If Missouri were an independent and sovereign State all must admit that she could see a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering."

This Court took original jurisdiction in the case of *GEORGIA v. TENNESSEE COPPER CO.*, 206 U. S. 230. In that case the Court held (text 237):

"The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a

suit by a State for an injury to it in its capacity of quasi-soverign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power. The alleged damage to the State as a private owner is merely a makeweight, and we may lay on one side the dispute as to whether the destruction of forests has led to the gullying of its roads."

This Court took original jurisdiction in the case of *TEXAS v. WHITE*, 7 Wall. 700. In this case this Court held (text 724-5):

"The Union of the States never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to 'be perpetual.' And when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained 'to form a more perfect Union.' It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not?

"But the perpetuity and indissolubility of the Union, by no means implies the loss of distinct

and individual existence, or of the right of self-government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States, under the Constitution, though the powers of the States were much restricted, still, all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. And we have already had occasion to remark at this term, that 'the people of each State compose a State, having its own government, and endowed with all the functions essential to separate and independent existence,' and that 'without the States in union, there could be no such political body as the United States.' Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

We could cite other cases of which this Court took original jurisdiction at the instance of a State. We think the principles upon which the State of Florida stands and the rights she asserts are clearly set forth in the authorities cited.

The case of *MISSOURI v. HOLLAND*, 252 U. S. 416, was not a case of original jurisdiction but in that case this Court held (text pages 430-1):

“This is a bill in equity brought by the State of Missouri to prevent a game warden of the United States from attempting to enforce the Migratory Bird Treaty, Act of July 3, 1918, c. 128 40 Stat. 755, and the regulations made by the Secretary of Agriculture in pursuance of the same. The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the States by the Tenth Amendment, and that the acts of the defendant done and threatened under that authority invade the sovereign right of the State and contravene its will manifested in statutes. The State also alleges a pecuniary interest, as owner of the wild birds within the borders and otherwise, admitted by the Government to be sufficient, but it is enough that the bill is a reasonable and proper means to assert the alleged quasi-sovereign rights of a State. *KANSAS v. COLORADO*, 185 U. S. 125, 142. *GEORGIA v. TENNESSEE COPPER CO.*, 206 U. S. 230, 237. *MARSHALL DENTAL MANUFACTURING CO. v. IOWA*, 226 U. S. 460, 462.”

Under paragraph 5 of the bill complainant shows a pecuniary interest in that the property of the State will be depleted, and her sources of revenue materially affected.

Under paragraph 6 of the bill, complainant shows the invasion of sovereign rights.

We have not lost sight of the provision of Section 3224, Revised Statutes of the United States, which provides:

“No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.”

This statute is intended to apply to the individual taxpayer, and not in a case like the one at bar.

We have not overlooked the cases of:

MASSACHUSETTS *v.* MELLON, 262 U. S. 447, and

NEW JERSEY *v.* SARGENT, U. S. Supreme Court Advance Opinions, 70th Law edition, pamphlet of February 1, 1926, page 177, decided by this Court, January 4th, 1926.

Neither of these cases are parallel with the instant case.

Under the Constitution of the United States each State is guaranteed a republican form of government free from federal interference in its purely domestic affairs; its powers are as supreme within its sphere as are the powers delegated to the Federal Government.

It would be difficult to conceive of a stronger case than the instant one. The Constitution of the State of Florida prohibits the Legislature of Florida forever in the future from levying an inheritance tax. The State's finances and condition are such that it does not need an inheritance tax. The State does not owe one dollar; does not have one cent of bonded indebtedness; has so wisely administered its domestic affairs that it had as of the 1st of June, 1926, fifteen million dollars of cash in the State treasury.

The United States Government imposes a Federal inheritance tax, but distinctly provides that the “tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any state or territory or the District of

Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section."

This shows that the Federal Government itself does not need the tax, nor has it imposed the same for the purpose of revenue or for the carrying on of the operations of its Government, but for the sole and express purpose of compelling and coercing those States which do not have State inheritance taxes to levy the same.

How can the sovereignty of a State be more completely and effectually imposed upon and interfered with than by this legislation? If the present revenue law is held not to be an invasion of the sovereign rights of the States, then how could there be any Federal legislation that would be? The United States can only impose and levy a sufficient amount of taxes to meet the legitimate expenses of the Government; and each State can only impose a sufficient amount of taxes to meet the legitimate expenses of the State Government. The imposition of any tax by either the Federal or the State Government not necessary for such purposes and the rebating of a Federal tax unnecessarily so levied would violate the principles underlying the imposition of taxes in every respect. The United States Government can impose taxes in any manner and upon any property allowed by the Constitution of the United States. The several States can impose taxes on any property or business except where the State might be prohibited by the Constitution of the United States or by the provisions of the State Constitution. Each State is free, within Constitutional limitations, to raise its revenue as it sees fit; and the Federal Government has no right to act as a tax collector for the respective States or to impose the means and method and manner of raising revenue in the respective States.

The inheritance tax, as provided for by the Federal

Act, is not the imposition of a tax, and was never intended as such; it is simply a discrimination against the State of Florida, an invasion of the sovereign rights of the State, and an undertaking to penalize it for not imposing an inheritance tax. Such being the case, the State has a direct interest in this controversy, and, having a direct interest, and, under the Constitution of the United States, the Supreme Court having jurisdiction in all cases wherein a State is a party, Florida should be permitted to maintain this suit.

If this Estate Tax imposed by the Revenue Act of 1926 is constitutional and valid, then any tax imposed under the provisions of the Constitution of the United States could be rebated. In this manner a majority of the States could combine and force a minority of the States to carry the burden of the expenses of the Federal Government. A majority of the States can combine and absolutely destroy the sovereignty of a minority of the States, and in so doing would destroy their own sovereignty.

Is Florida to sit supinely by and see her sovereignty destroyed?

The Supreme Court of the United States was created and established to protect the rights and sovereignty of each and every State. Force is denied to the States in the protection of their rights. Will this Court shut its ears to the plea of a State? If it does, then where is our remedy?

Respectfully submitted,

JOHN B. JOHNSON,

Attorney General of the State of Florida.

PETER O. KNIGHT,

JAMES F. GLEN,

Of Counsel for the State of Florida.

(14)

Supreme Court of the United States

OCTOBER TERM, 1926

No. , Original

STATE OF FLORIDA, COMPLAINANT,

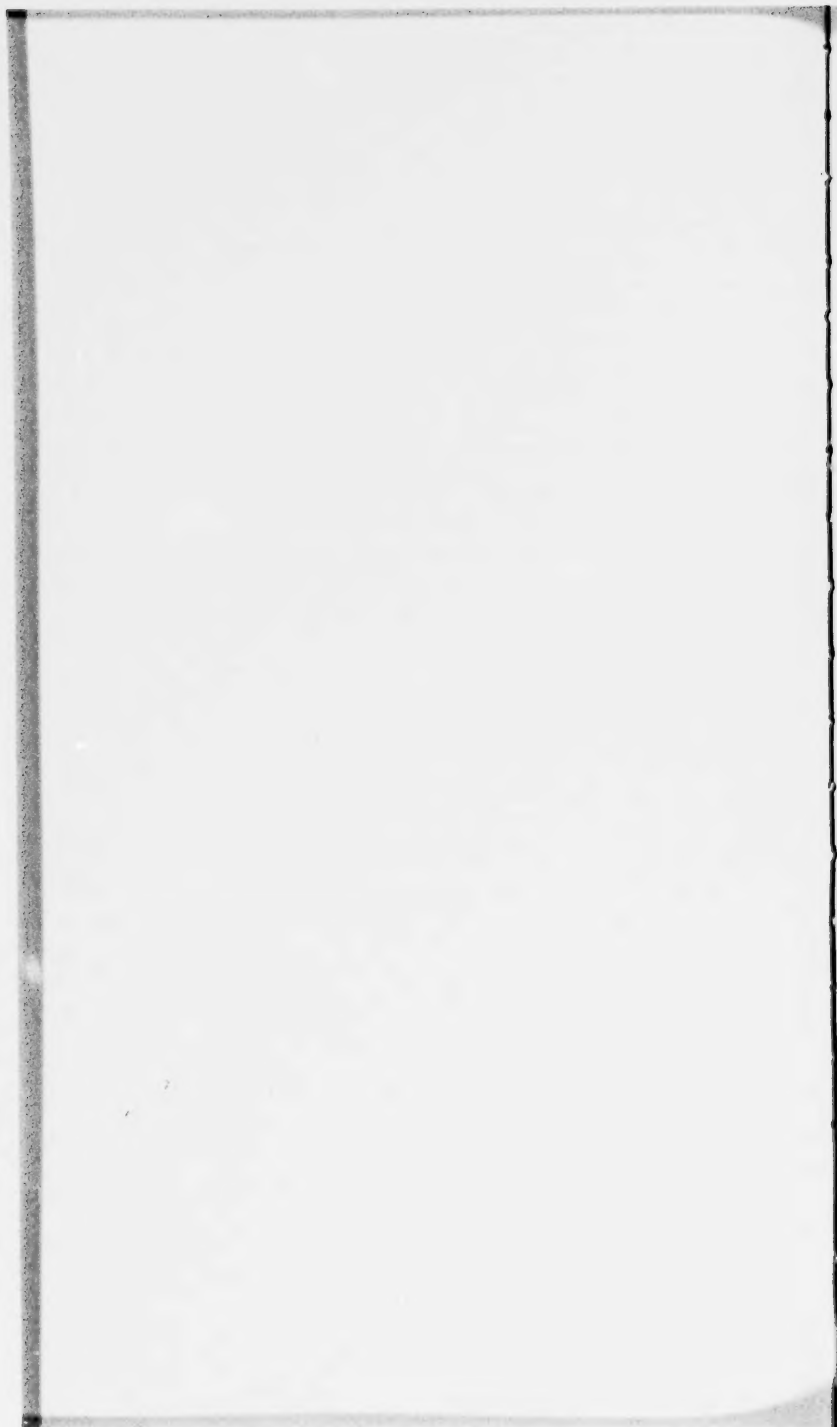
vs.

ANDREW W. MELLON, AS SECRETARY OF THE TREASURY OF THE UNITED STATES; AND DAVID H. BLAIR, AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, DEFENDANTS.

REPLY BRIEF TO BRIEF OF DEFENDANTS ON RETURN TO RULE TO SHOW CAUSE WHY THE STATE SHOULD NOT BE ALLOWED TO FILE BILL OF COMPLAINT, RETURNABLE OCTOBER 4TH, A. D. 1926.

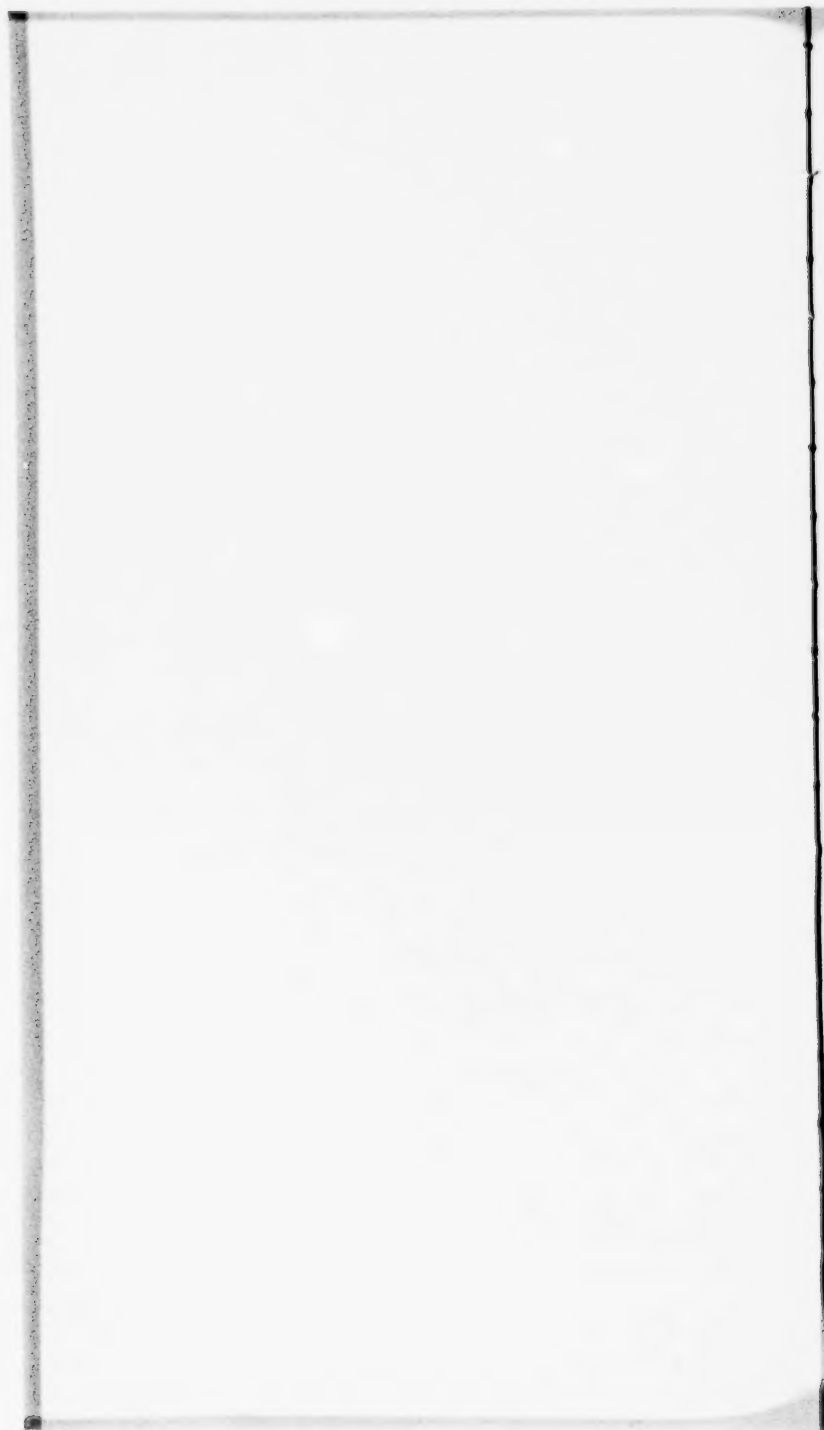
JOHN B. JOHNSON,
Attorney General of the State of Florida.

PETER O. KNIGHT,
JAMES F. GLEN,
Of Counsel for the State.



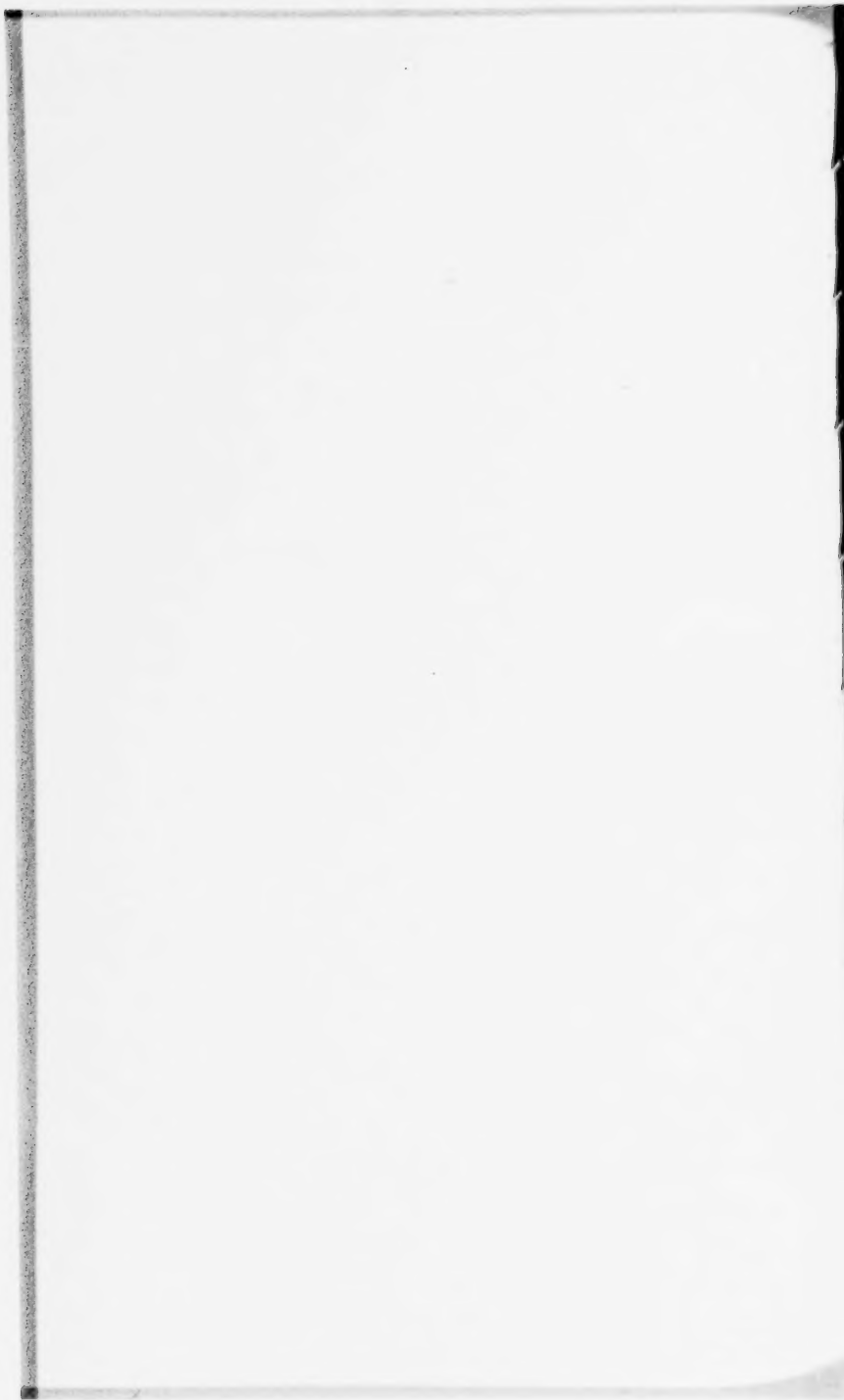
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Supreme Court of the United States

OCTOBER TERM, 1926

No. , Original

STATE OF FLORIDA, COMPLAINANT,

VS.

ANDREW W. MELLON, AS SECRETARY OF THE TREASURY OF THE UNITED STATES; AND DAVID H. BLAIR, AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES, DEFENDANTS.

REPLY BRIEF TO BRIEF OF DEFENDANTS ON RETURN TO RULE TO SHOW CAUSE WHY THE STATE SHOULD NOT BE ALLOWED TO FILE BILL OF COMPLAINT, RETURNABLE OCTOBER 4TH, A. D. 1926.

Three reasons are urged by Respondents why the State of Florida should not be allowed to maintain its bill in this Court—all apart from the fundamental question of which decision is sought by the present proceeding, and as to which, for the purpose of this hearing, it must be assumed the State is in the right.

The reasons urged why this Court should decline jurisdiction are—(1) the prohibition of Section 3224 of the Revised Statutes, which forbids any suit for the purpose of restraining the *assessment or collection* of any tax; (2) denial that the State suffers any direct injury through the taxation of its citizens, as a predicate for maintenance of its bill; and (3) assertion that the State is not entitled to sue as *parens patriae*.

FIRST REASON

We do not think it can reasonably be said that the bill furnishes a predicate of fact for the first reason. The bill is not primarily a suit to restrain the assessment or col-

lection of a tax. Both by its allegations and in its prayer, the bill seeks a decree that the "Revenue Act of 1926," so far as it undertakes by Section 301 to provide for a tax on the estates of decedents, and create machinery to make that purpose effective, be declared to be in violation of Section 8 of Article 1 of the Constitution of the United States. The injunction prayed is only an incident or consequence of the relief sought, and it extends to the requiring of returns from representatives of estates of decedents, as well as other steps looking to the enforcement of Section 301.

It seems clear to us, also, that Section 3224 is intended to be applicable only to individual controversies relating to specific taxes, and not to taxes sought to be imposed upon a large class under color of an unconstitutional statute. It approaches *reduction ad absurdum* to suggest that there must be universal submission throughout the United States to an unconstitutional statute, followed by tens of thousands of claims or suits for the recovery of taxes paid under it.

HILL v. WALLACE, 259 U. S., 44.

See also GRAHAM v. DUPONT, 262 U. S., 234.

But there is a conclusive answer to this "reason" in the fact that it is impossible to give Section 3224 the construction placed upon it, without rendering that Section, itself, unconstitutional. No statute can take away the constitutional jurisdiction of this Court, and if the bill presents a case, which but for Section 3224 would have been cognizable in this Court, it is equally cognizable in this Court notwithstanding Section 3224; because if the State has a remedy at all it is and can only be in equity, to secure a declaratory decree, with necessary process to make that decree effective.

Still another consideration militates against the first "reason" urged by the respondents. It is a familiar rule of statutory construction that ordinarily the sovereign is not bound by a statute, and, having regard to our dual form of government, it would require something more than the general language of Section 3224 to bind the

State in a proceeding such as the present. It seems so abundantly plain, however, that the first "reason" is no reason that it is needless to pursue this subject.

SECOND REASON

Coming now to the second reason, an even greater difficulty exists in finding a predicate of fact for its support. The bill directly alleges that enforcement of the Act will result in withdrawal from the State of several millions of dollars per annum, thereby diminishing the revenues of the State derived from taxation to the extent of the taxes on the property so withdrawn. It alleges an interest in the State, to prevent discrimination, and to prevent prosecution of its citizens for failure to comply with the Act. Indeed it is the State, itself, that is bound to be the principal sufferer under the provisions of the Act. "Upon this point a page of history is worth a volume of logic," (as said by this Court in another case, *New York Trust Co. v. Eisner*, 256 U. S., text 349,) and we append hereto a page of history embodied in a copy of a circular issued in the State of Georgia, which speaks for itself. The circular clearly shows that the State of Georgia has directly and avowedly made itself the beneficiary of eighty *per centum* of the Federal tax, and points out how States like Florida are losers to that extent under their laws forbidding State inheritance taxes.

In every State it is true that a comparatively small minority of its citizens bear the direct burden of Federal taxation, either income tax or estate tax, but a large majority of the citizens of every State do bear the direct burden of State taxation, and all of those citizens are directly affected by any scheme which requires the State to increase their burdens. It follows, therefore, that where a State is deprived of eighty *per centum* of the amount of the Federal estate tax, it, directly, and its general taxpayers, indirectly, are more directly affected by the Federal burden than the estate of the decedent with which the Federal Government is concerned, in the ratio of four to one.

It is said on behalf of the respondents that the State is only indirectly affected, and the cases of *Minnesota v. Northern Securities Company*, 194 U. S., 48, and *Massachusetts v. Mellon*, 262 U. S., 447, are cited. The latter case we shall discuss at length, because the real question involved on this hearing is whether this case falls within the same category or within the category of *Missouri v. Holland*, 252 U. S., 416.

Minnesota v. Northern Securities Company has no bearing on this case. What was held in that case was that the Anti-trust Act *by its terms* afforded no remedy to the State of Minnesota to maintain a suit in equity to prevent its violation.

Coming now to *Massachusetts v. Mellon*, it is to be observed that the case was merely one to prevent what was claimed to be a misappropriation of public funds by Congress. There was no attempt to arrest the machinery for levying or imposing a tax, no claim that the alleged misappropriation of public money would add anything to the taxes levied by the United States, or the burdens imposed upon its taxpayers. The appropriation was \$480,000 for the first year, \$240,000 each subsequent year for five years, together with \$1,000,000 for the fiscal year ending June 30, 1922, and the same amount annually thereafter for five years. Those amounts were too insignificant to be a factor in fixing the rates of taxation, either for income or estate tax, and in addition to that the appropriations came out of general funds of the United States, which in a large measure are derived from other sources.

The State of Massachusetts sought by original bill to enjoin the alleged misappropriation, because it claimed the Act was unconstitutional. The Court held that the State of Massachusetts was not entitled to maintain its bill, because the bill presented no justiciable controversy. The appropriation Act, commonly called the Maternity Act, was passed in aid of public hygiene, and made co-operating States the beneficiaries of the money appropriated, leaving it optional with them whether to co-operate

and thus become beneficiaries or not. It had no force as a law of the United States, in the State of Massachusetts, unless the State chose to accept it. It sought to take away no money from the State of Massachusetts, or its citizens, through the exercise of the taxing power, or otherwise. As said by this Court:

"In the last analysis, the complaint of the plaintiff State is brought to the naked contention that Congress has usurped the reserved powers of the several States by the mere enactment of the statute, though nothing has been done and nothing is to be done without their consent; and it is plain that that question, as it is thus presented, is political, and not judicial, in character, and therefore is not a matter which admits of the exercise of the judicial power."

After reviewing some authorities, the Court further said:

"It follows that in so far as the case depends upon the assertion of a right on the part of the State to sue in its own behalf we are without jurisdiction. In that aspect of the case we are called upon to adjudicate, not rights of persons or property, not rights of dominion over physical domain, not quasi sovereign rights actually invaded or threatened, but abstract questions of political power, or sovereignty, of government. No rights of the State falling within the scope of the judicial power have been brought within the actual or threatened operation of the statute, and this Court is as much without authority to pass abstract opinions upon the constitutionality of acts of Congress as it was held to be in *Cherokee Nation v. Georgia*, *supra*, of State statutes."

The Court further held that a taxpayer in Massachusetts was equally forbidden from questioning the misappropriation, on grounds of public policy—

“His interest in the moneys of the Treasury—partly realized from taxation and partly from other sources—is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a court of equity.”

Expressed in a sentence, the Court decided that a State cannot exercise censorship over Acts of Congress through the Courts, on the mere claim that they are unconstitutional, unless it has a right that is invaded thereby, beyond its mere political rights. We are convinced that *Massachusetts v. Mellon* by implication supports the bill in the present case.

In the present case we have an Act of Congress operative in Florida, against the will of the State and its citizens, to which obedience must be yielded, if it is constitutional. That Act directly seeks and requires the removal from the State of property to the extent, according to the allegations of the bill, of several millions of dollars per annum. Its removal will diminish the revenues of the State. Not only that, but the Act directly discriminates in its effect against the State of Florida, as compared with other States. Those considerations, and others, particularly the fact that it cannot be denied that the representatives of Florida decedents questioning the constitutionality of the Act will have a justiciable controversy, discriminate this case from *Massachusetts v. Mellon*, and bring it within the category of *Missouri v. Holland*.

“The ground of the bill is that the statute is an unconstitutional interference with the rights reserved to the States by the 10th Amendment, and that the acts of the defendant, done and threatened under that authority, invade the sovereign right of the State and contravenes its will manifested in statutes. The State also alleges a

pecuniary interest, as owner of the wild birds within its borders and otherwise, admitted by the government to be sufficient, but it is enough that the bill is a reasonable and proper means to assert the alleged quasi-sovereign rights of a State."

MISSOURI v. HOLLAND, 252 U. S., text 431.

THIRD REASON.

The third reason urged in bar of the suit is that the State is not entitled to bring this suit as *parens patriae*. We suppose this to mean that the State, if without some interest of its own to protect, cannot sue as representing its citizens who may have some interest. If so, it has been covered by the preceding discussion, which shows a direct interest on the part of the State, and that the suit is not brought merely as *parens patriae*.

CONCLUSION.

It must be borne in mind that if the State of Florida has a right to sue in any Court, it has a right to sue in this Court; and the "reasons" urged by the respondents deny its right to sue at all, not merely its right to sue in this Court. In effect, the respondents say to the State, that although it sustains a vast injury in its financial and property interests from the Act claimed to be unconstitutional, the State can secure no remedy except by indirection, through a suit brought to recover a tax paid under protest by the representatives of the estate of some Florida decedent, to which it will not even be a party. This cannot be the law.

All of which is respectfully submitted.

JOHN B. JOHNSON,

Attorney General for the State of Florida.

PETER O. KNIGHT,

JAMES F. GLEN,

Of Counsel for the State of Florida.

NEW INHERITANCE TAX LAW OF GEORGIA MORE ADVANTAGEOUS.

**Georgia Has No Income Tax and No Inheritance Tax,
Except to Claim the Federal Exemption.**

"Georgia's Inheritance Tax Law—the new law enacted in the session of the Legislature of 1925 and the extra session of 1926—is more advantageous to the property owner than that of almost any other State; more so by far than the non-inheritance tax law of Florida," said State Tax Commissioner James H. Dozier.

"In my judgment the provisions of the new Georgia law ought to be advertised to the world in comparison with that of other States. The controlling feature of the new law in this State provides:

"From and after the passage of this Act it shall be the duty of the legal representatives of the estate of any person who may hereafter die a resident of this State, and whose estate is subject to the payment of a Federal Estate tax, to file a duplicate of the return which he is required to make to the Federal authorities, for the purpose of having the estate tax determined, with the State Tax Commissioner. When such duplicate is filed with said official he shall compute the amount that would be due upon said return as Federal Estate Tax, under the Act of Congress relating to the levy and collection of Federal Estate Taxes, upon the property of said estate taxable in Georgia, and assess against said estate as State inheritance taxes eighty per centum of the amount found to be due for Federal Estate Taxes.—There shall be no other inheritance tax assessed or collected out of estates of persons dying after the passage of this act, under the laws of this State."

"There you are. Analyze the Act and see just what it means, then compare it with the laws of other States, particularly the so-called non-inheritance tax States. The analysis shows the Georgia law is far better than if the Legislature of the State, as have been done in other

States, merely tax property without authorizing the levy or collection of any inheritance tax. The way is clear. Take an estate in Florida, for instance, large enough to have levied against it by the Federal Government as an estate tax say \$75,000. Florida has no inheritance tax law of any kind, but the Federal Government levies a \$75,000 estate tax, collects it and the whole amount goes into the Federal treasury, with not one penny of benefit, so far as that \$75,000 goes, to either the estate or to the State of Florida.

"Make the same calculation in Georgia. The same kind of an estate, of the same value, finds a Federal estate tax levied against it of \$75,000. The Federal law provides that this estate is entitled to an exemption of 80 per cent of the levy made against it for Federal estate taxes PROVIDED THAT 80 PER CENT HAS BEEN PAID THE STATE IN WHICH THE ESTATE IS LOCATED, AS AN INHERITANCE TAX. Do you get it? In the Florida case the Federal government can give no exemption, nor can the State claim it, because there is no State inheritance tax, therefore the Federal government has to take the whole \$75,000. In Georgia the Federal government assesses \$75,000 against the estate, credits that estate with an exemption of four-fifths of the amount levied and takes one-fifth into the Federal treasury, the four-fifths which is credited as an exemption going into the treasury of Georgia. In both cases the estate pays only the \$75,000; in our case we get our share for applying to the expense of operating our State government. The non-inheritance tax States are, of necessity, compelled to supply that deficiency in the source of revenue by taxing other property on which there is no Federal exemption.

"Doesn't that make it quite clear just why the Georgia law is better than those laws which other States are advertising to the world as a great attraction to people to become residents? I think so, and am quite sure people who are to be attracted because of such advantages

will so find if they are informed on just what the provisions of the Georgia law are."

Mr. Dozier, in a casual way, carried his illustration further to show that, if Congress passed an Act reducing the Federal estate tax, automatically that reduces the aggregate amount to be levied before the exemption, and, therefore, affects this State just as it would the Federal government and, whenever the Federal estate tax is finally wiped out, under the present Georgia law the whole inheritance tax in this State also is eliminated. He is quite enthusiastic over the idea that these details and comparisons should be brought to nation-wide attention in any advertising campaign by Chambers of Commerce, civic and commercial organizations and the large Georgia advertisers contemplate.

Georgia has No INCOME TAX. Georgia has No INHERITANCE TAX.

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. —, ORIGINAL

STATE OF FLORIDA, COMPLAINANT

v.

ANDREW W. MELLON, AS SECRETARY OF THE TREASURY of the United States, and David H. Blair, as Commissioner of Internal Revenue of the United States

ON RULE TO SHOW CAUSE WHY LEAVE TO FILE BILL OF COMPLAINT SHOULD NOT BE GRANTED

RESPONSE BY DEFENDANTS AND BRIEF IN SUPPORT THEREOF

STATEMENT

On June 7, 1926, this Court ordered a rule to issue upon the defendants, returnable Monday, October 4, to show cause why leave should not be granted to the State of Florida to file a proposed bill of complaint against the defendants.

By this bill the State challenges the constitutionality of the estate tax provisions of Section 301 of the Revenue Act of 1926, whereby certain grad-

uated taxes are imposed on the estates of decedents, subject to the proviso that:

(b) The tax imposed by this section shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 304.

It seeks to restrain the Secretary of the Treasury of the United States and the Commissioner of Internal Revenue of the United States from collecting such estate taxes from the legal representatives of decedents' estates in the State of Florida, alleging that—

the action of the defendants in so doing, unless restrained, will result in the withdrawal from the State of Florida of money to the extent of several million dollars per annum, and in that way diminish the revenues of the State of Florida, which are derived largely from the taxation of property within the State. (Bill, p. 5.)

It claims that the State does not levy any inheritance tax and that the challenged section of the Revenue Act of 1926 is a direct effort on the part of Congress—

(a) To coerce the State of Florida into imposing and levying an estate or inheritance tax, and

(b) To penalize the State of Florida and its property and citizens for the failure upon the part of the State to impose a tax or excise on estates of decedents or inheritance tax. (Bill, p. 6.)

It claims that the Act discriminates against the citizens of Florida in the matter of taxation and that the State is directly interested in preventing this discrimination.

And it alleges that the Act violates the provision of the Constitution that all excises shall be uniform throughout the United States.

REASONS WHY LEAVE TO FILE THE BILL SHOULD NOT
BE GRANTED

The defendants submit the following reasons why the complainant should not be granted leave to file its bill:

1. The State seeks to enjoin the collection of taxes. Such a suit is forbidden by Section 3224 of the Revised Statutes, which provides that "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

2. The State does not suffer any direct injury through the taxation of its citizens and therefore may not maintain this bill on that ground.

3. The State is not entitled to bring this suit as *parens patriae*.

WILLIAM D. MITCHELL,
Solicitor General.

ARGUMENT

I

THE STATE SEEKS TO ENJOIN THE COLLECTION OF TAXES. SUCH A SUIT IS BARRED BY SECTION 3224 OF THE REVISED STATUTES, WHICH PROVIDES THAT "NO SUIT FOR THE PURPOSE OF RESTRAINING THE ASSESSMENT OR COLLECTION OF ANY TAX SHALL BE MAINTAINED IN ANY COURT"

The provision of the Revenue Act of 1926 which is challenged by the State imposes taxes. Therefore, as repeatedly decided by this Court, the enforcement of the provision could not be enjoined even upon the ground that it was unconstitutional. *Graham v. du Pont*, 262 U. S. 234; *Bailey v. George*, 259 U. S. 16. The Court could not take jurisdiction unless there were further shown "some extraordinary and entirely exceptional circumstance" which rendered the provisions of the Revised Statutes inapplicable. *Dodge v. Osborn*, 240 U. S. 118, 122. Such circumstances, it is submitted, are best described in the language which this Court used in *Fenner v. Boykin*, decided May 24, 1926, concerning the enjoining of state officers from enforce-

ing criminal laws, where it was said that that may not be done except under extraordinary circumstances "where the danger of irreparable loss is both great and immediate."

Such extraordinary and exceptional circumstances do not exist in the present case. There is no danger of any loss to the State itself. Nor does the tax fall upon any individuals in any such manner as did the alleged tax which was held unconstitutional in *Hill v. Wallace*, 259 U. S. 44. The Court there said (p. 62):

In the case before us, a sale of grain for future delivery without paying the tax will subject one to heavy criminal penalties. To pay the heavy tax on each of many daily transactions which occur in the ordinary business of a member of the exchange, and then sue to recover it back would necessitate a multiplicity of suits and, indeed, would be impracticable. For the Board of Trade to refuse to apply for designation as a contract market in order to test the validity of the act would stop its 1,600 members in a branch of their business most important to themselves and to the country. We think these exceptional and extraordinary circumstances with respect to the operation of this act make § 3224 inapplicable.

Nothing, however, is shown in the bill which the State wishes to file which takes the present case out of the general rule that even if the tax were unconstitutional its assessment and collection could not be enjoined.

A single individual can not maintain a suit to enjoin collection of a Federal tax. The citizens of Florida collectively could not maintain it. A suit by the State itself to enjoin collection from any of its citizens is plainly within the letter and spirit of the statute. The public interest would be more seriously affected by suits by States to enjoin collection of Federal taxes within their limits than by individual injunction suits. The attempt at wholesale interference by a State in the collection, within its limits, of the revenues of the Federal Government is a startling innovation.

II

THE STATE DOES NOT SUFFER ANY DIRECT INJURY THROUGH THE TAXATION OF ITS CITIZENS, AND THEREFORE MAY NOT MAINTAIN THIS BILL UPON THAT GROUND

This Court has repeatedly decided that only those who are themselves affected by legislation may challenge its validity. *Cronin v. Adams*, 192 U. S. 108, 114; *Collins v. Texas*, 223 U. S. 288, 295, 296; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 544, 545; *McCabe v. Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151, 163, 164; *Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571, 576; *Lehon v. Atlanta*, 242 U. S. 53, 55, 56; *Newark N. G. & F. Co. v. Newark*, 242 U. S. 405, 408; *Fairchild v. Hughes*, 258 U. S. 126, 129; *Texas v. Interstate Commerce Commission and Railroad Labor Board*, 258 U. S. 158;

Massachusetts v. Mellon, 262 U. S. 447; *New Jersey v. Sargent*, 269 U. S. 328.

Indeed, only those who are *directly* affected by the operation of a statute may raise the question of its constitutionality. *Marge v. Parsons*, 114 U. S. 325; *Hagood v. Southern*, 117 U. S. 52; *In re Ayers*, 123 U. S. 443, 496; *Stearns v. Woods*, 236 U. S. 75, 78; *Hall v. Geiger-Jones Co.*, 242 U. S. 539, 554. See also *Minnesota v. Northern Securities Co.*, 194 U. S. 48, 70. The Federal Estate tax does not affect the State any more directly than Massachusetts was affected when the United States collected from citizens of that State taxes which might be used in disbursements under the Maternity Law. *Massachusetts v. Mellon*, 262 U. S. 447, 479, 482. The State has no more direct interest in the effect of the law upon its citizens than the State of Minnesota had in the violation of the Sherman law by the formation of the Northern Securities Company and the suppression of the free competition between interstate carriers to which its citizens were entitled, an injury to the State which the Court termed "at most only remote and indirect." *Minnesota v. Northern Securities Co.*, 194 U. S. 48, 70.

The contention that the State has an interest entitling it to sue because by the alleged unlawful tax the resources of its citizens, subject to State taxes, will be depleted, is without substance. On that theory a State has an interest entitling it to sue to enjoin any act by any person or body politic which might operate to take property from any of

its citizens and remove it from the taxing power of the State.

III

THE STATE IS NOT ENTITLED TO BRING THIS SUIT AS PARENS PATRIAE

In the case of a real controversy with a defendant who may be sued, a State may put in issue its rights as a quasi sovereign (*Georgia v. Tennessee Copper Co.*, 206 U. S. 230; *Missouri v. Holland*, 252 U. S. 416, 431; *Wyoming v. Colorado*, 259 U. S. 419) and the rights which its citizens possess because of their citizenship in the State. Where the health, comfort, and welfare of the residents of a State are seriously jeopardized by threatened outside action the State, as representative of the public, has an interest apart from that of the individuals affected and may maintain an original action in this Court. *Pennsylvania v. West Virginia*, 262 U. S. 553, 592.

But a State may not take any steps toward protecting citizens of another State against action by the latter State; and, on the same principle, when men are citizens both of a State and of the United States, the State may not represent its own citizens in claiming as against the United States any rights which those who are citizens of both governments derive directly from the United States and not through the State itself. As pointed out in *Massachusetts v. Mellon*, 262 U. S. 447, 485, 486:

It can not be conceded that a State, as *parens patriae*, may institute judicial proceedings to protect citizens of the United

States from the operation of the statutes thereof. While the State, under some circumstances, may sue in that capacity for the protection of its citizens (*Missouri v. Illinois*, 180 U. S. 208, 241), it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as *parens patriae*, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status.

Of course, unless the State itself is injured or unless it is entitled to sue in a representative capacity, it can not sustain this bill. If a provision of the Constitution which is invoked was not intended primarily for the protection of the party before the Court, the Court will not inquire into the validity of the governmental action. *Smith v. Indiana*, 191 U. S. 138, 148; *Hatch v. Reardon*, 204 U. S. 152, 160; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 544; *Heald v. District of Columbia*, 259 U. S. 114, 123; *Oliver Iron Mining Co. v. Lord*, 262 U. S. 172, 180, 181.

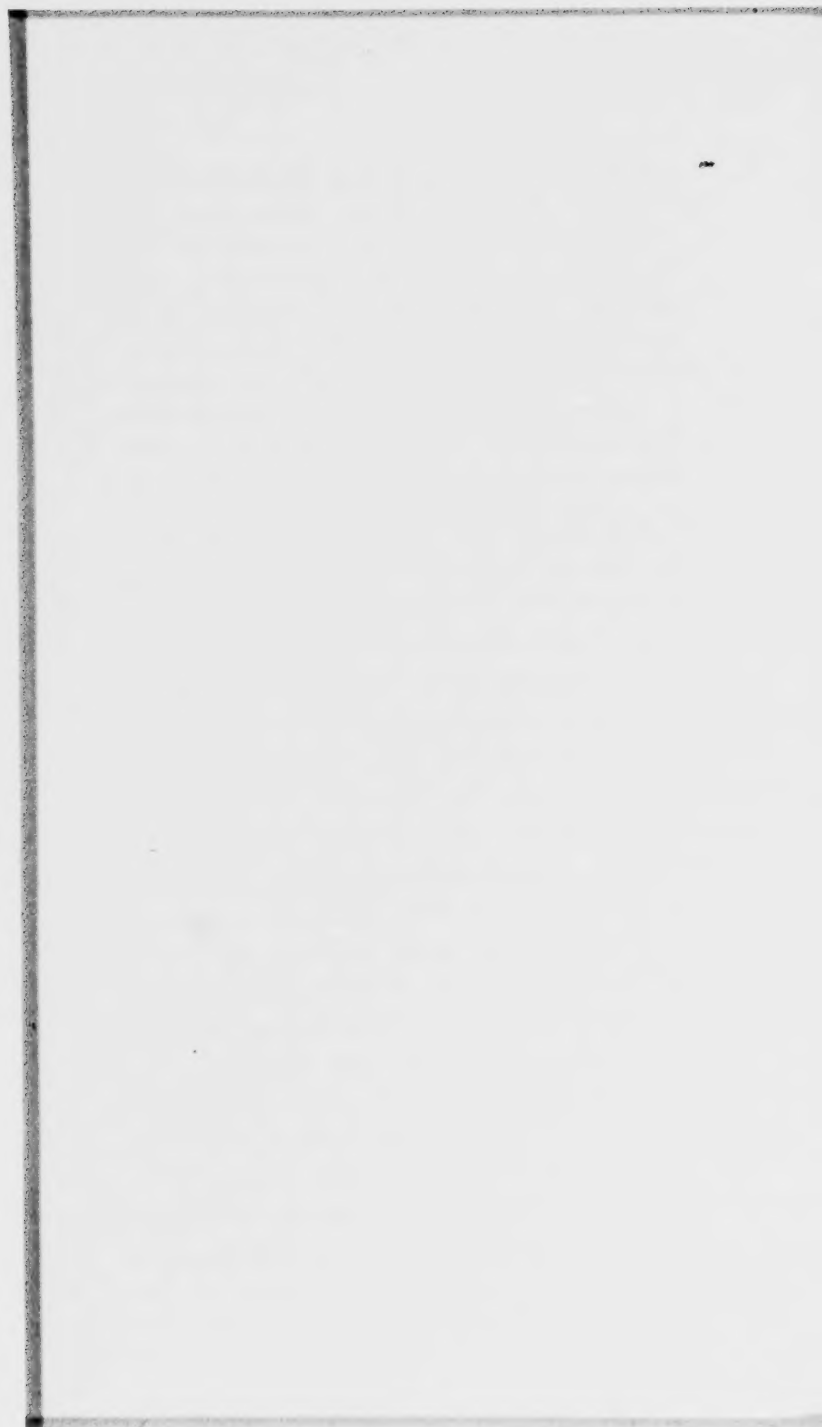
Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.

ROBERT P. REEDER,
Special Assistant to the Attorney General.

OCTOBER, 1926.





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Supreme Court of the United States

OCTOBER TERM, 1926.

“No. , ORIGINAL.”

STATE OF FLORIDA,

Complainant,

vs.

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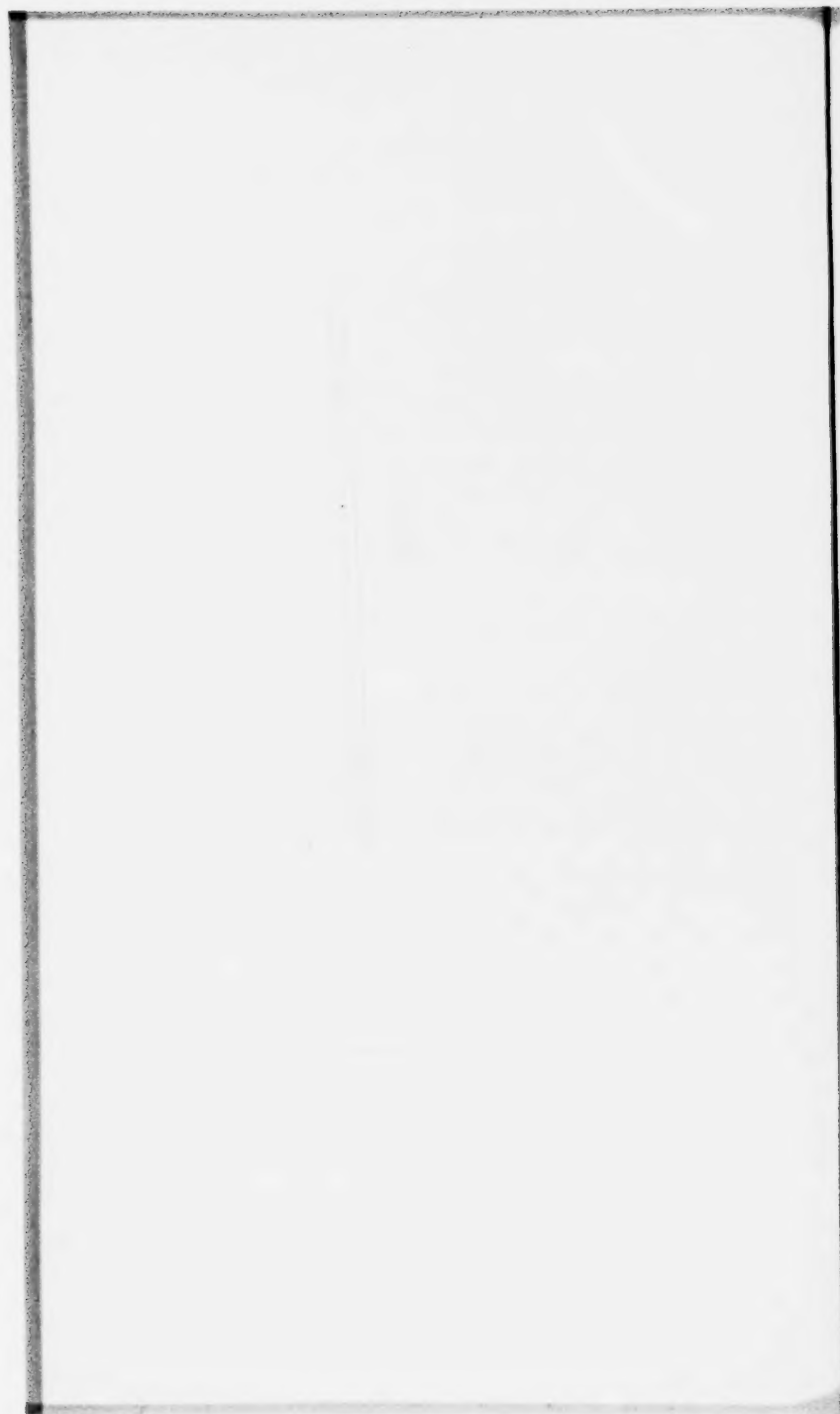
Defendants.

Brief on the Unconstitutionality of the Federal Estate
Tax and the Right of the State to Complain
Thereof by Original Bill in this Court.

THOMAS B. ADAMS,

Amicus Curiae at the request of
the State of Florida.

JACKSONVILLE, FLORIDA.



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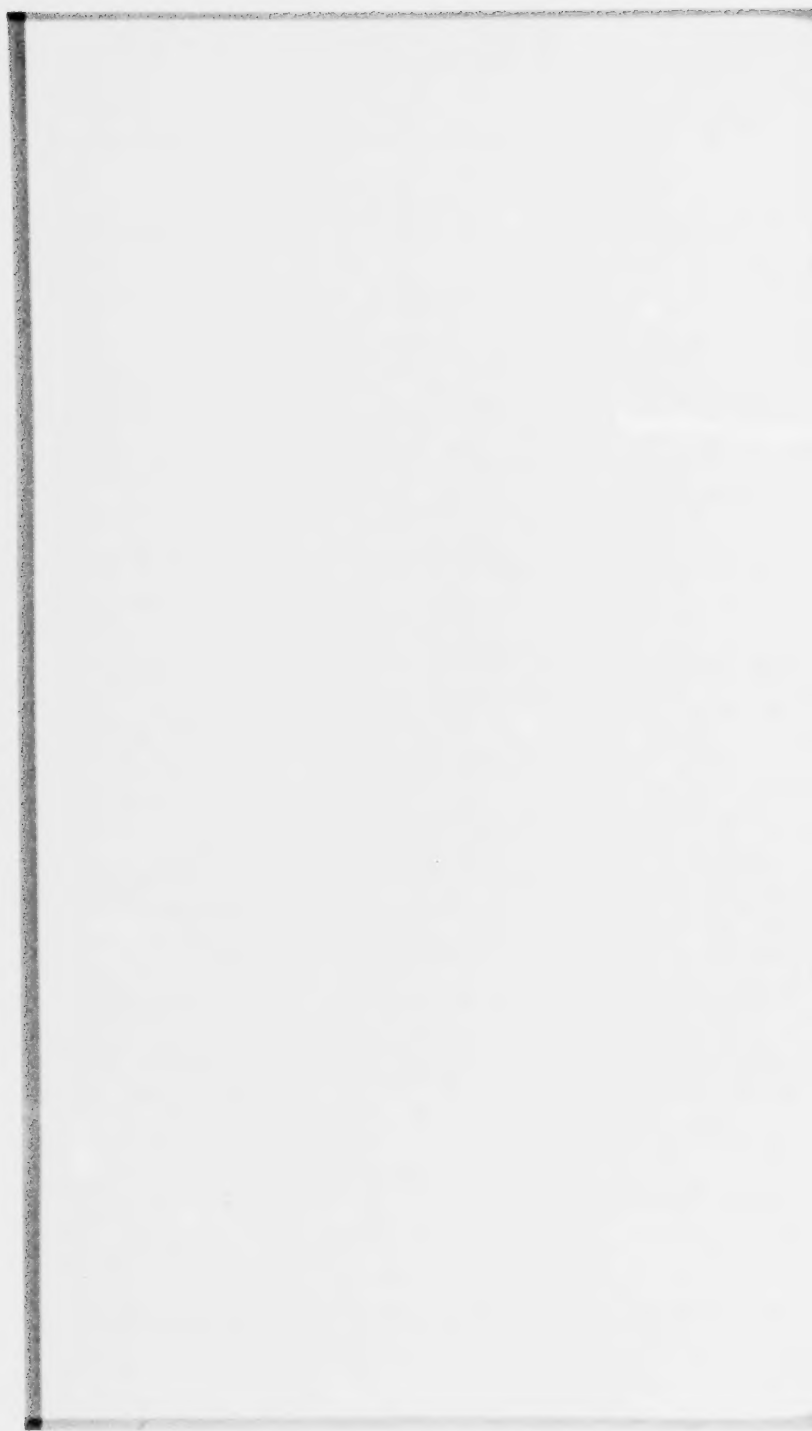
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Defendants.

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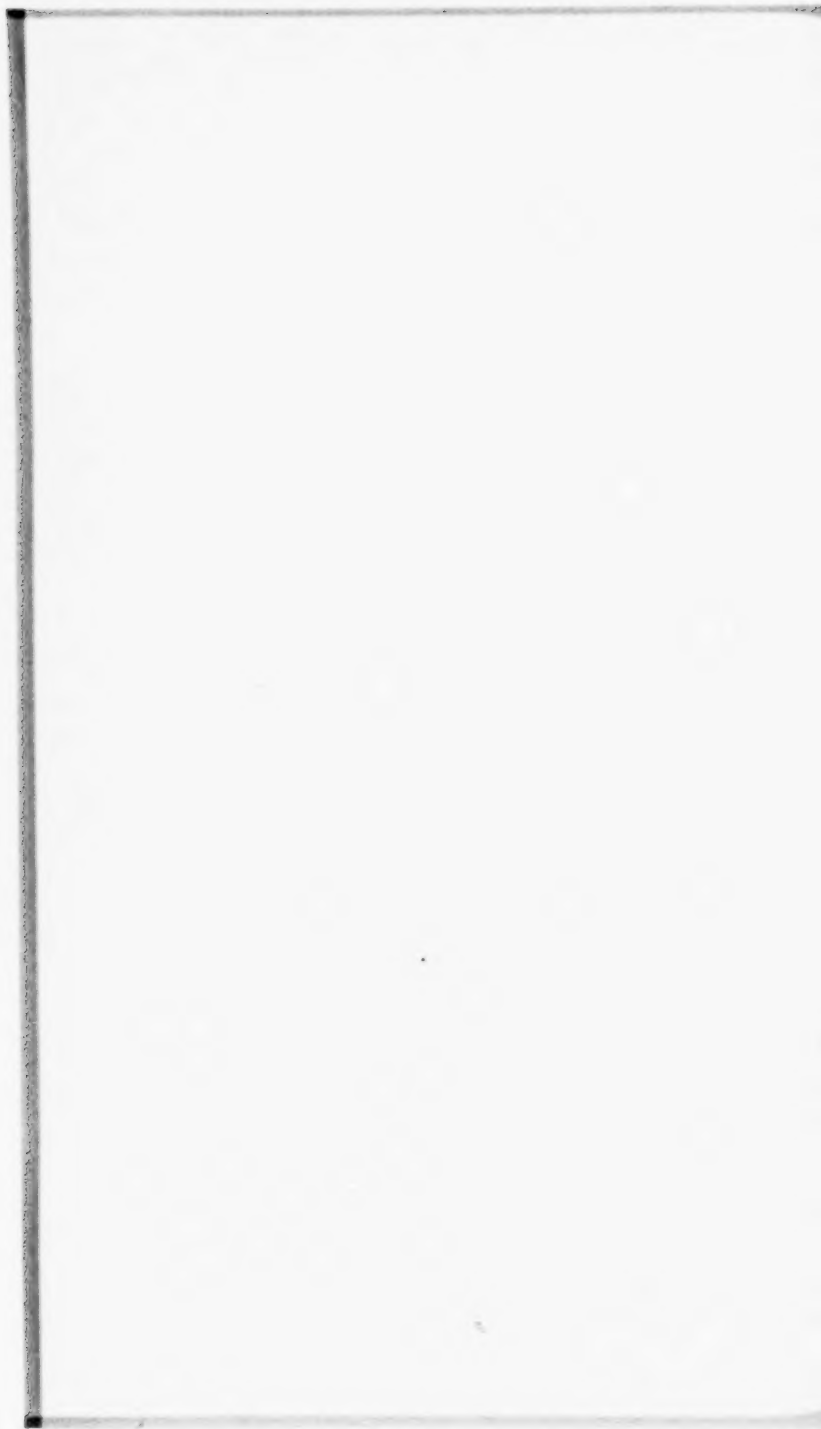
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IN THE
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Internal Revenue of the United States,

Defendants.

**BRIEF ON BEHALF OF THE STATE OF
FLORIDA AMICUS CURIAE.**

The State of Florida, by its bill, attacks the constitutionality of the estate tax provisions of the Revenue Act of 1926, and in particular, sub-section B of section 301 of that Act. The relief sought is an injunction against the Secretary of the Treasury and the Commissioner of Internal Revenue to prevent the enforcement of the estate tax provisions of the Act within the bounds of the State of Florida.

The jurisdictional question of the right of the State to maintain this bill on its own account is reserved for the last general topic of this brief for the reason we deem it important to first ascertain clearly the cause and nature of the subject-matter of the complaint, in order more accurately to determine whether the same is of such a character that the State as such is entitled to be heard in this Court in an original proceeding.

I.

Constitutional limitations of the power of Congress to levy and collect an excise tax.

The power to "lay and collect" an estate tax, the same being a tax on the right and privilege of a decedent to transmit property, is given by clause 1, section 8, Article I, of the Constitution.

Knowlton v. Moore, 178 U. S. 41;

New York Trust Co. v. Eisner, 256 U. S. 345.

The power thus conferred has several limitations, three of which are contained in the same clause of the Constitution.

1. THE LEVY AND THE COLLECTION MUST BE GEOGRAPHICALLY UNIFORM IN OPERATION THROUGHOUT THE UNITED STATES.

Knowlton v. Moore, 178 U. S. 41;

Labelle Iron Works v. United States, 256 U. S. 392.

The power conferred is a dual power to "lay *and* collect." The language, "But all * * * excise shall be uniform throughout the United States" is a limitation on both the power to "lay," levy or assess the tax, and on the power to "collect" the tax. Therefore, a statute which provides for a uniform levy, but not for a uniform collection is void because of this limitation.

2. POWER OF COLLECTION CANNOT BE DELEGATED TO THE STATES, OR BE MADE SUBSERVIENT TO STATE LAWS.

Clause 1, section 8, Article I, vests in Congress the power to lay and *collect*. This express power having been given to Congress, no part of it may be exercised by any other authority. The power so given, both in the matter of the levy and in the matter of the collection is exclusive.

McCulloch v. Maryland, 4 Wheat. 316.

Again, by section 1, Article I of the Constitution:

“All legislative power herein granted shall be vested in the Congress of the United States.”

Sub-section B of section 301 of the Revenue Act of 1926 leaves the amount of the tax to be collected up to eighty per cent thereof subject to variation by the laws of the several States existing at the time the Act was passed, or which may be subsequently enacted. Again, by section 7, Article I of the Constitution,

“All bills for raising revenues shall originate in the house of Representatives.”

It is therefore not competent to provide that the revenue coming into the National Treasury from a National Revenue Act may be increased or diminished by the acts of the several States. If this were so, Congress could in very important particulars abdicate its exclusive power in favor of the States to such an extent as to greatly embarrass the Federal Government—all contrary to the express language and spirit of the Federal Constitution.

3. THE LAYING AND COLLECTION OF AN EXCISE TAX MUST BE FOR NATIONAL REVENUE PURPOSES “TO PAY THE DEBTS AND PROVIDE FOR THE COMMON DEFENSE AND GENERAL WELFARE OF THE UNITED STATES.”

In construing this language of section 8, Article I, of the Constitution, Mr. Justice STORY, in his work on the Constitution, quoted in *United States v. Boyer*, 85 Fed. text. 431, among other things, said:

“The reading, therefore, which will be maintained in these commentaries, is that which makes the latter words a qualification of the former; and this will be best illustrated by supplying the words which are necessarily to be understood in this interpretation. They will then stand thus: ‘The Congress shall have

power to lay and collect taxes, duties, imposts and excises, *in order* to pay the debts, and to provide for the common defense and general welfare of the United States;’ that is, for the purpose of paying the public debts and providing for the common defense and general welfare of the United States. In this sense, Congress has not an unlimited power of taxation, but is limited to specific objects—the payment of the public debts, and providing for the common defense and general welfare. A tax, therefore, laid by Congress for neither of these objects, would be unconstitutional, as an excess of its legislative authority.”

Therefore, “to pay the debts,” etc., is not an independent power conferred, but is a limitation on the power to tax expressly conferred by the prior clause of the same section. If, in the examination of the estate tax provisions contained in the Revenue Act of 1926, in the light of the history of its enactment, it should develop that those provisions of the statute are not expected to produce national revenue, but were designed under the guise of a tax to accomplish some purpose wholly foreign to the purposes declared in section 8, Article I, as explained by Mr. Justice Story, then such estate tax provisions are without the power of Congress to enact and are void. The Child Labor cases, *Bailey v. Drexel*, 259 U. S. 20; *Hammer v. Dagenhart*, 247 U. S. 251; and the Future Trading Act decisions of *Hill v. Wallace*, 259 U. S. 44, and *Trusler v. Crooks*, 70 L. Ed. , 46 Sup. Ct. Rep. 165, are applications of this limitation.

4. PARTICULAR RESERVATIONS TO CONGRESS OF POWER TO REVISE STATE LAWS ARE EXCLUSIVE OF ALL OTHERS.

By clause 2 of section 10, Article I, of the Constitution, Congress is given power to revise and control the inspection laws of the States, but such supervisory power is to be exercised only in respect of that particular class of State laws, and cannot by any fair interpretation extend to

a supervisory authority over the general tax laws which the several States may enact. Again, the Fourteenth Amendment to the Constitution prescribes certain limitations against the enactment of State laws, and concludes by providing that Congress may enforce the same by some appropriate legislation. That reserved power of Congress came under construction in the *CIVIL RIGHTS CASES*, 109 U. S. 3, where the Court, speaking through Mr. Justice Bradley, pointed out that the power of Congress there given was to enforce the prohibition, and that only. Said the Court:

"It does not invest Congress with power to legislate upon subjects which are within the domain of state legislation; but to provide modes of relief against state legislation or state action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights."

The maxim, "The expression of the one is the exclusion of the other," applies with respect to the power of Congress given to supervise state inspection laws and to enforce the prohibition of the 14th Amendment. Such has been the construction of the Constitution from the earliest times. For example, in the case of

Barron v. City of Baltimore, 7 Peters, 243, text 247, 248, 249 and 250.

we find the following in an opinion rendered by Chief Justice MARSHALL:

"The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. Each state established a constitution for itself, and, in that constitution, provided such limitations and restrictions on the powers of its particular government as its judgment dictated. * * * In their several constitutions they have imposed such restrictions on their

respective governments as their own wisdom suggested; such as they deemed most proper for themselves. *It is a subject on which they judge exclusively, and with which others interfere no farther than they are supposed to have a common interest.*

* * * Had the people of the several States, or any of them, required changes in their constitutions; had they required additional safeguards to liberty from the apprehended encroachments of their particular governments; the remedy was in their own hands, and would have been applied by themselves.

* * * Had Congress engaged in the *extraordinary occupation of improving the constitutions of the several states* by affording the people additional protection from the exercise of power by their own governments *in matters which concerned themselves alone*, they would have declared this purpose in plain and intelligible language" (italics ours).

As we shall subsequently point out in this discussion, Congress in enacting the estate tax provisions of the Revenue Act of 1926, undertook to engage in the "extraordinary occupation of improving the constitution" of the State of Florida. Not only so, but in the case of

Fairbank v. United States, 181 U. S. 283,

we find the counterpart of the Court's decision in *McCulloch v. Maryland*, 4 Wheat. 316. That is to say, in the *Fairbank* case the Court points out that the limitations contained in the Constitution are to be construed liberally in order to give full force and effect to such limitations in the same way that express powers given should be interpreted, as set forth in *McCulloch v. Maryland*. Said the Court:

"If the constitution in its grant of powers is to be so construed that Congress shall be able to carry into full effect the powers granted, it is *equally imperative* that where prohibition or limitation is placed upon the power of Congress that prohibi-

tion or limitation should be enforced in its spirit and to its entirety. It would be a strange rule of construction that language granting powers is to be liberally construed and that language of restriction is to be narrowly and technically construed."

The *Fairbank* case, as will be further noted in this discussion, concerned the limitations contained in clause 1, section 8, Art. I of the Constitution.

Florida by constitutional amendment has seen fit to bar state income taxes and state inheritance taxes. Applying the Federal Constitution according to the above cited rules of construction, the Congress has no right, directly or indirectly, to supervise that question, and it has no right to discriminate against the State or to penalize its people if they see fit not to change their constitution.

5. THE POWER "TO LAY AND COLLECT" EXCISE TAXES MUST BE SO EXERCISED AS NOT TO INFRINGE UPON THE RIGHTS RESERVED TO THE STATES OR TO THE PEOPLE, AS EXPRESSLY DECLARED BY THE 10TH AMENDMENT.

The 10th Amendment pronounced a rule of construction to allay a

"widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination the framers intended that no such assumption should even find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act."

Kansas v. Colorado, 206 U. S. 46.

Speaking of the first set of amendments to the Constitution, Chief Justice MARSHALL, in the *Barron* case, 7 Peters, 250, said:

“These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments.”

The 10th Amendment in substance added no new limitation to the powers of Congress, but was declaratory and a definition of limitations already contained in the Constitution. The power of a State to tax within its sphere is no less supreme than the power of Congress to tax within the sphere of the National Government.

McCulloch v. Maryland, 4 Wheat. 406.

In the case of

Ward v. Maryland, 12 Wallace, text 427,

it was said:

“Power to tax for State purposes is as much an exclusive power in the States as the power to lay and collect taxes to pay the debts and provide for the common defense and general welfare of the United States is an exclusive power in Congress. Both are subject, however, to certain prohibitions and restrictions, but in all other respects they are supreme powers possessed by each government entirely independent of the other.”

If, therefore, Congress in the adoption of the estate tax provisions of the Revenue Act of 1926, went beyond its proper sphere, and undertook by means of said provisions to supervise, either directly or indirectly, the tax laws of the several States, and not for the purpose of raising national revenue, then such provisions were without the power of Congress to enact and are void. These principles were quite lately declared by this Court. The decisions of the Court in the Child Labor cases have already been mentioned; the decisions as to the Future Trading Act have also been mentioned. In the case of

Linder v. United States, 268 U. S. 5, 69 L. Ed. 819,

involving the narcotic law, the Court, speaking through Mr. Justice McREYNOLDS, said:

"Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not intrusted to the Federal Government. And we accept as established doctrine that any provision of an Act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within power reserved to the states, is invalid, and cannot be enforced. *M'Culloch v. Maryland* 4 Wheat. 316, 423, 4 L. Ed. 579, 605; *License Tax Cases*, 5 Wall. 462, 18 L. Ed. 497; *United States v. Dewitt*, 9 Wall. 41, 19 L. Ed. 593; *Keller v. United States*, 213 U. S. 138, 53 L. Ed. 737, 29 Sup. Ct. Rep. 470, 16 Ann. Cas. 1066; *Hammer v. Dagenhart*, 247 U. S. 251, 62 L. Ed. 1101, 3 A. L. R. 649, 38 Sup. Ct. Rep. 529, Ann. Cas. 1918 E, 724; *Child Labor Tax Case*, 259 U. S. 20, 66 L. Ed. 817, 21 A. L. R. 1432, 42 Sup. Ct. Rep. 449."

In the case of

Frew v. Bowers, 12 Fed. (2d) 625, 629 (2 CCA)

Circuit Judge HAND, delivering a concurring opinion on the question of what should be included in the "net estate" as defined by the Revenue Act of 1918, said:

"I agree that under the guise of assessing a tax upon the transfer of Mr. Nash's estate Congress might not include other property on which at that time it could not levy an excise. *Latterly, at least, the taxing power has been limited to its proper scope, despite formal disguises.*" (Italics ours)

Citing the Child Labor cases and other decisions by this Court.

II.

Subsection B of Section 301 violates constitutional uniformity in the matter of collecting the estate tax.

As already observed, the dual power to "lay and collect" an excise tax is limited in both its parts by the requirement of uniformity contained in the same section granting the power. The graduated tax provided for by sub-section A of section 301 is predicated upon the value of the "net estate" as defined in section 303. The provisions of section 303 do operate with geographical uniformity throughout the United States. In determining the value of the "net estate" for the purpose of arriving at the value of the right or privilege to transmit, section 303—(a)-(1) excludes from consideration "any estate, succession, legacy or inheritance taxes" paid or to be paid to the States. That is to say, no deduction is allowed in arriving at the value of the "net estate" on account of the payment or duty to pay any such taxes to the States. In arriving at the value of the "net estate" as a basis of value of the right to transmit, it was within the discretion of Congress to exclude such deduction.

Frick v. Pennsylvania, 268 U. S. 573, 500, 69 L. Ed. 1058, 1067.

In like manner it is competent for a state statute, in arriving at the value of a "net estate" as a basis for determining the value of the right to transmit, or the right to inherit, to exclude any deduction for Federal estate taxes paid or to be paid.

Stebbins v. Riley, 268 U. S. 137, 69 L. Ed. 884.

It must be borne in mind, however, that the estate tax is not laid directly upon the property defined as the "net estate," but is laid upon the right or privilege of transmitting that which constitutes the "net estate." Other-

wise the estate tax would be a direct tax, subject to apportionment, and not an excise tax.

The right or privilege which is taxed by the estate tax is similar to the right or privilege to do an express business. If the Federal government saw fit to levy a general license tax upon the American Railway Express Company to do business, the value of the right would ordinarily be determined according to the population of each city or town where business was transacted. In such case population like the "net estate" would be used merely as a basis of measuring the value of the right or privilege to be exercised. In case of such a license tax on the Express Company, the highest bracket of the graduated tax based on population would be paid in the City of New York, but the fact that Florida has no city of that size would not destroy the uniform force and effect of such a law. Similarly, the fact that there may be larger and more in number of "net estates" in the State of New York, or the State of Pennsylvania, than in Florida, does not destroy the uniform force and effect of the Federal estate tax, so far as the matter of laying, levying or assessing is concerned. But when the *levy* is made the power given by clause 1, sec. 8, Art. I of the Constitution, is only one-half exercised. The *collection* is equally important, and is bound by the same limitation of uniformity. Sub-section B of section 301 of the Revenue Act pertains solely to the matter of *collection*, and disregards the limitation of uniformity. After the *levy* is complete under the operation of sub-section A of section 301, taken in connection with section 303, then sub-section B of section 301 sets up an entirely different rule as a basis for the collection. Of course, it might be possible that all states have the same laws as to estate, inheritance, legacy or succession taxes, and the same rates, and that no state would make any change therein, in which case only could the matter of collection provided for by this statute operate with geographical uniformity. But such laws of the States are not uniform.

Congress knew this, and this Court judicially knows it. In the case of

Dahnke-Walker Milling Co. v. Bondurant, 257
U. S. 282, 289, 66 L. Ed. 231, 243,

this Court said:

“A statute may be invalid as applied to one state of facts, and yet valid as applied to another.”

This Court judicially knows that in November, 1924, Florida adopted a constitutional amendment prohibiting any state inheritance tax or any state income tax. It is so alleged in the State's bill. The Court judicially knows that the same sort of state constitutional provision exists in Alabama, and that the laws and rates greatly vary in other States having such taxes. The Court also judicially knows that there is no such local law for the support of the local government in the District of Columbia or in the Territory of Alaska.

Binns v. United States, 194 U. S. 486.

In the Congressional Record (and all references to the Congressional Record hereinafter given, unless otherwise specified, are intended to refer to the 69th Congress—1st Session), at page 4151, Mr. Mills of New York spread upon the record, pages 4152 to 4155, a brief prepared February 23, 1926, by Mr. Frederick P. Lee, legislative counsel of the Senate, undertaking to sustain the constitutionality of sub-section B of section 301. The data contained in Mr. Lee's brief we assume is authentic as to the diversity of state laws and rates. He said:

“At present 45 States have inheritance, estate, succession, or legacy taxes. Only Florida, Alabama, Nevada, and the District of Columbia impose no such taxes. In Florida the legislature is barred by a recently adopted constitutional provision from enacting any such tax. In the 45 States having such taxes, the maximum and minimum rates range as follows:

Maximum rates

Percentage	Number of States
5	4
7	1
8	5
9	1
10	8
12	2
14	1
15	3
16	3
20	7
21	1
25	3
30	2
35	1
40	3

Minimum rates

Percentage	Number of States
$\frac{1}{2}$	2
1	35
2	7
3	1

Of course it is hardly necessary to add that the tax burden is determined not alone by the rate of tax but also by the applicable exemptions, classifications of beneficiaries, property subject to tax, method of computation, scale of brackets, and the like. (See R. C. Osgood, *Practical Difficulties in the Settlement of Decedents' Estates*, Proceedings of the National Conference on Inheritance and Estate taxation, February 19-20, 1925, published by the National Tax Association, pp. 24-39)''

When credits are allowed up to eighty per cent of the estate, etc., taxes paid to the several States, the amount of tax to be *collected* is made to depend upon the provisions of the varying and diverse state statutes in existence, or that may be subsequently passed, with an obvious lack of geographical uniformity. Moreover, should all States, and Congress for the District of Columbia and Territory of Alaska, see fit to adopt the same identical laws and rates on the subject of inheritance taxes, so as to create a uniform credit in such states, district and territory, yet as to Florida and Alabama, the legislative departments of those States could not do so. Only the people, with incident delays of elections, etc., could repeal the constitutional provisions existing in those States. The Congress, knowing these conditions, did not intend or expect that the *collection* of the estate tax provided for by this Act would operate uniformly throughout the United States.

Such operation and effect of the Act in the matter of collection not only violates the limitation of uniformity contained in section 8, Art. I, but such operation also violates section 1, Art. I, and section 7, Art. I, in that Congress seeks to abdicate a part of its exclusive function, leaving to the States to vary and determine the amount of credits to be allowed when the Commissioner of Internal Revenue proceeds with the collection of the estate tax provided for by this Act. Under the rule laid down by this Court in the case of

Knickerbocker Ice Co. v. Stewart, 253 U. S. 164, requiring uniformity in admiralty laws, such abdication of power by Congress in favor of the States is void.

The historical reasons for the constitutional requirement of uniformity as to excise taxes, admiralty laws, bankruptcy laws and the like, are well known, *i. e.*, that the Acts of Congress might not promote or provide for sectionalism, favoritism or discrimination against one state or section

in favor of others. Otherwise the purposes declared by the preamble to the Constitution "to insure domestic tranquility" and "to form a more perfect union" would be defeated.

The distinction we have pointed out between the uniformity of the statute as to the levy and the lack of uniformity as to the collection of the estate tax, seems to have escaped discussion throughout the debates in the House and in the Senate, and, as well, in the brief prepared by Mr. Lee, above referred to. The nearest approach to such distinction was by Congressman Cox of Georgia on December 16, 1925, Cong. Rec. p. 560; also by Senator George of Georgia, on February 9th, 1926, Cong. Rec. p. 3291, where he said:

"Mr. George. Mr. President—

The Presiding Officer. Does the Senator from Florida yield to the Senator from Georgia?

Mr. Fletcher. I yield.

Mr. George. I wish to ask the Senator if any of the cases to which he has referred have considered a provision analogous to this particular provision of the bill. The Senator will note that the tax levied is uniform, but that provision is made for credit against that tax—that is, credit for any amount paid by any taxpayer in any State on account of a similar tax. I would like to know, the Senator having gone into the legal phase of it, whether or not any of the cases deal with precisely that situation. In other words, it occurs to me that here is uniformity so far as the levy of the tax is concerned, but is is not uniform throughout all of the States that certain credits may be allowed. Those credits, of course, are not uniform, because every State does not have an inheritance tax. I wanted to know if, in the Senator's study of this question, he had thought of that particular phase.

Mr. Fletcher. My position about that is that whereas the rates are uniform, as the Senator has in mind, there is a violation of the constitutional re-

quirement of uniformity, which means territorial uniformity, and therefore this tax is not uniform as to all the States, because there are at least three States that have no inheritance tax at all under which any deductions can be made."

In the brief of Mr. Lee of February 23, 1926, Cong. Rec. p. 4155, he attempts to answer this argument on the lack of uniformity, but, we think, without success. He urges the provisions of the Bankruptcy Law as an example and cites the case of *Hanover National Bank v. Moyses*, 186 U. S. 181. The provision of the Bankruptcy Law, providing for allowance of homestead exemptions fixed by State statutes is, we think, clearly distinguishable. In the *Moyes* case the Court upheld such provision on the ground that the Bankruptcy Law operated only on that part of the bankrupt's estate which was subject to the claims of his creditors. In other words, the Bankruptcy Law operates only upon the *residue* of the estate, after taking out homestead exemptions defined by State laws, and hence the law operates with geographical uniformity. But here, as already pointed out, the levy is made on the value of the "net estate" which takes no account of State laws, and allows no deductions for estate, inheritance, legacy or succession taxes paid or to be paid to the States. In making the levy the Act here in question brooks no interference by State laws, but when it comes to the matter of collecting, then the credits are allowed up to eighty per cent, according to the amounts paid to the State pursuant to State laws. Another distinction is that the estate tax does not operate directly upon the property constituting the "net estate," as does the bankruptcy law upon the residue of the bankrupt's estate, after homestead exemptions have been taken out. But, as previously pointed out, the Act here deals with the "net estate" only in arriving at the value of the right or privilege to transmit.

Going back to the illustration of the license tax as to the Express Company, let us suppose that the graduated

levy is made to depend upon the population of the several cities and towns where business is transacted. The levy in such a case would be admittedly geographically uniform. But let us suppose that Congress, if it enacted such a law, should see fit in the matter of collection, to give credit up to eighty per cent in all states or municipalities for license taxes paid or to be paid to such states or municipalities, knowing that the rates vary in the different states and municipalities, and in at least two states constitutional provisions exist prohibiting such state or municipal license tax. In such a case, we apprehend that no one would contend that there was or could be uniformity in the matter of collecting the Federal license tax.

As another example, let us consider the corporate franchise tax of one per cent on the net income over and above \$5,000.00, involved in the case of

Flint v. Stone Tracy Co., 220 U. S. 107.

Defining that tax, the Court, at text 162, said:

“The tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed and which are not enjoyed by private firms or individuals.”

Again, at page 165 of the text, the Court said:

“The measure of taxation being the income of the corporation from all sources, as that is but the *measure of a privilege tax* within the lawful authority of Congress to impose, it is no valid objection that this *measure* includes, in part at least, property which as such could not be directly taxed.”

Again, at page 174, the Court said:

“The law operates uniformly, geographically considered, throughout the United States, and in the same way wherever the subject-matter is found. A liquor tax is not rendered unlawful as a revenue

measure because it may yield nothing in those states which have prohibited the liquor traffic."

Suppose, however, the Congress had seen fit to insert in that Statute a clause similar to sub-section B of section 301 of the Revenue Act of 1926, allowing a credit not exceeding eighty per cent of the franchise tax paid to the State wherever the corporation might be located, knowing that some States had no such franchise taxes, knowing that in the States which had such franchise taxes the rates vary, and knowing that in several other States constitutional provisions existed prohibiting such State tax acts. We submit that no one would be able to say that such a provision in that act would have complied with the constitution on the subject of uniformity in the matter of collecting the tax.

On the fly-leaf of the current advance sheets of the Southern Reporter during the past several months an advertisement has appeared reading as follows:

INCORPORATE IN FLORIDA

NO INCOME TAX. NO INHERITANCE TAX.
NO FRANCHISE TAX. NO CAPITAL STOCK TAX
NO TAX ON INTANGIBLES. NO HARASSING QUESTION-
NAIRES OR ELABORATE REPORTS
NO PUBLICATION OR RED TAPE

Our service, for lawyers only, includes:

Drafting articles of incorporation, qualifying foreign corporations, maintaining statutory local office, furnishing corporate supplies.

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If the Congress, in passing the Revenue Act of 1926, had concluded that Florida by such laws was securing too

great an advantage, and was likely to become the "mother of corporations," instead of Delaware, and had thereupon retained the capital stock tax upon corporations but had inserted a provision similar to sub-section B of section 301, providing for a credit up to eighty per cent of such taxes paid to the States, knowing that Florida had no such law, and that the State requirements varied in the several States, then again we submit that such provisions could not be sustained in consonance with the constitutional requirement of uniformity. In the case of

Fairbank v. United States, 181 U. S. 283, text 298,

the Court explains the definition of geographical uniformity as set forth in *Kewellton v. Moore*, 178 U. S. 41, and then, speaking with reference to that decision, said:

"There was no suggestion that the qualification could be disregarded or limited in any legislation; the opinion proceeded upon the assumption that the uniformity provision was an absolute restriction on the power of Congress, and the argument was to demonstrate that the tax in question in no manner conflicted with either the letter or spirit of such restriction. If it had been in the mind of the court that such restriction as to uniformity could be evaded by a mere change in the form of legislation the opinion could have been less elaborate and the difficulties of the case largely avoided."

According to the tabulation of the various rates in the several States, made by Mr. Lee, above quoted, a "net estate" of \$10,000,000.00 would be subject to at least twenty different bases of collection, depending upon which state or territory, or District of Columbia, the decedent had his domicile at the time of his death. If this be the uniformity in the matter of collecting an excise tax required by the Constitution, then we submit, a new definition of such uniformity has been invented not heretofore recognized.

On December 16, 1925, Congressman Sears of Florida, attacked the constitutionality of sub-section B of section 301, when the bill was being debated in the House. His speech appears Cong. Rec. pp. 658 to 660. On February 5, 1926, Senator Fletcher of Florida also attacked that sub-section of the House Bill, pointing out its unconstitutionality for several reasons—his speech appears Cong. Rec. pp. 1109 to 1128. On February 9th Senator Fletcher's attack on the same grounds was repeated, supported by many decisions of this Court, when the Senate was debating the amendment of the Senate Finance Committee, striking the estate tax provisions from the House Bill. Senator Fletcher's second speech appears Cong. Rec. pp. 3287 to Senator Fletcher had previously on January 19, 1926, put into the record a brief prepared by Mr. John S. Parker of New York, and same appears Cong. Rec. pp. 2046 to 2047. After these attacks for lack of uniformity and on other grounds, the conference report on the bill was up for consideration in the House on February 23, 1926, at which time Congressman Mills of New York, Cong. Rec. p. 4151, observed that those attacks on constitutional grounds in the House and Senate had not been answered, and he then, introducing the brief of Mr. Lee, hereinbefore mentioned, undertook to defend sub-section B of section 301, by the claim that the collection of the estate tax would be in accordance with the taxpayer's "ability to pay," and therefore uniformity in operation of the estate tax would be attained. Such alleged basis of uniformity was best answered by Senator McLean, of Connecticut, on February 9, 1926, Cong. Rec. p. 3294, when he said:

"Mr. McLean. I have not finished my point. We pretend that we want to tax ability to pay. I think we not only should pretend to tax *ability to pay*, but should confine out taxes as far as possible to ability to pay. That means that we must in a large measure tax profits. When we impose an inheritance tax we impose it regardless of ability to pay on the part of the man who pays the tax.

A son who inherits a large property, a going concern, a mercantile establishment, or a factory thinks he has inherited great wealth possibly, but, if the factory is running at a loss it is worth less than nothing to him unless he disposes of it at a great sacrifice. The resources of the inheritance taxpayer are frequently weaker than those of the deviser or person from whom he inherited the property. A son who inherits a property may be young, or the person who inherits may be the widow; the property inherited may be an apartment house or a hotel or a factory; and, perhaps, there is not the previous efficiency of management; there is not the superintendence; there is nobody to take care of it possibly, unless someone is called in from outside for that purpose. To pounce upon that property and impose a heavy tax, if it comes at a period when no profits are being made, frequently may result in serious consequences. I submit that we are violating the principle upon which we base our Federal taxes—namely, taxing profits or capital gains or incomes which represent profits.”

It was also observed in course of the debate that if successive owners of an estate die in rapid succession, the estate would likely be entirely wiped out by the tax, and the industry or property which constitutes the estate completely destroyed. The theory of ability to pay is obviously unsound. If ability to pay were the test intended in determining the amount to be collected, the Act would not have omitted mention thereof. As we shall subsequently point out, the lack of uniformity in the matter of collection was written into the law for an entirely different purpose than ability to pay. The real purpose, though it be for the desirable correction of some social or economic evil, supposed to exist in certain States, does not justify the transgression of the constitutional limitation of uniformity.

We have reviewed all the hearings before the Ways and Means Committee of the House, 69th Congress, on the sub-

ject of the estate tax; we have reviewed all the reports of committees on the Revenue Bill of 1926; we have reviewed all the debates in the House and Senate, on the subject of the estate tax, and in particular the eighty per cent credit proposition, and we find that every witness, every committee member, and every member of Congress, who advocated the eighty per cent credit proposition urged, as the primary reason for the adoption of such a credit provision, that the same would compel, or at least induce, the enactment of uniform State laws in the matter of inheritance taxes, in place of the great diversity and lack of uniformity in such laws then existing and Florida was singled out for special attack. A lack of geographical uniformity in such State laws was conceded by all who spoke on the subject, and yet the same lack of geographical uniformity up to eighty per cent was adopted as the rule for the collection of the Federal estate tax, as though no such limitation was contained in section 8, Art. I of the Constitution. Though the end sought to be accomplished may, by a majority in Congress, have been deemed desirable, yet the means chosen was not within the constitutional limitation of uniformity.

It was contended by Senator King, of Utah, and other proponents of this measure, Cong. Rec. p. 3291, that the eighty per cent credit to taxpayers was in substance a Federal appropriation for the benefit of the several states which might choose to take advantage thereof, similar to appropriations for river and harbor improvements, for the construction of highways, and other purposes. On the other hand, it was contended by Senator Fletcher, Cong. Rec. p. 3287, and other opponents of the measure, that the making of appropriations stands upon a different ground, and is, in fact, a power exercised under an entirely different clause of the Constitution. The position of Senator Fletcher is sustained and that of Senator King is overruled by the following language from the opinion of the dissenting Justices in the case of

Downes v. Bidwell, 182 U. S. text 355:

“Clause 7 of section 9 of Article 1 provides that ‘no money shall be drawn from the Treasury, but in consequence of appropriations made by law,’ and the proposition that this may be rendered inapplicable if the money is not permitted to be paid so as to be susceptible of being drawn out, is somewhat startling.”

The provisions of sub-section B of section 301 are in no sense an appropriation to the several States. No purpose is specified, and the revenue act itself does not purport to be an appropriation bill or act, but instead, an act to raise revenue. Hence it is quite clear that the lack of uniformity created by the proposed method of collecting the estate tax cannot be cured upon any theory that the eighty per cent credit proposition amounts to appropriations *pro tanto* to the several States, which, taken together with the amounts collected, would make the Statute have uniform operation throughout the United States in the matter of collection. Certainly if an appropriation was intended for the benefit of the several States, Congress did not have need to disguise the purpose in a bill to raise revenue. Nor could Congress delegate to the Commissioner of Internal Revenue power to make such appropriations to the several States before the revenue was actually collected and susceptible of appropriation.

II.

The purpose, operation and effect of the estate tax provisions—Title III—of the act are non-fiscal, disguised in the form of a tax.

This proposition is demonstrated, first, by comparing the provisions of the Act of 1926 with the Act of 1924; second, by the history of the Act of 1926; third, by the actual operation and effect of the statute in coercing State action.

1. THE ESTATE TAX PROVISIONS OF THE ACT OF 1926, WHEN COMPARED WITH THE ACT OF 1924, ARE NOT "NATURALLY AND REASONABLY ADAPTED TO THE EFFECTIVE EXERCISE" OF THE POWER OF CONGRESS TO RAISE FEDERAL REVENUE.

In the first place, the title of the Act

"An Act to Reduce and Equalize Taxation, Provide Revenue, and for Other Purposes,"

shows that the primary problem confronting Congress was to reduce Federal taxation, retaining only so many of the different forms of tax and only on such subjects as would meet the decreased fiscal needs of the Federal government. The problem was thus stated in the report of the Senate Finance Committee, #52, 69th Cong. p. 1, as follows:

" TREASURY SURPLUS

According to the estimates submitted in the annual report of the Secretary of the Treasury for the fiscal year 1925, the excess of ordinary receipts over total expenditures chargeable against ordinary receipts were, for the fiscal year 1925, \$250,505,238. For the fiscal year 1926 the surplus is estimated at \$262,041,756, and for the fiscal year 1927, \$330,307,895.

These figures show that notwithstanding the substantial reductions in taxes contemplated by the revision of 1924 more revenue will be obtained than the needs of the Government demand and justify a revision of the internal revenue laws in order to afford the country a further reduction in the burden of taxation."

What the bill actually did as it passed the House, and as amended in the Senate, along these lines is best shown by the following comparative table found in the report of the Senate Finance Committee, #52, 69th Cong. pp. 2 and 3:

"ESTIMATED REVENUE

The following table shows the estimated revenue to be collected under existing law during the calendar year 1926, and the estimated revenue to be collected for the calendar year 1926 under the bill as it passed the House and as it is reported to the Senate from the Finance Committee, together with the reductions proposed in the bill as reported to the Senate compared with the estimated collections for the calendar year 1926 under existing law:

*Estimated revenue, calendar year 1926, under the
following provisions:*

Source of revenue	1924 act	House bill	Finance committee bill	Reduction from present law under committee bill
Income tax	\$1,880,000,000	\$1,681,500,000	\$1,747,000,000	\$133,000,000
Miscellaneous internal revenue:				
Estate tax	110,000,000	110,000,000	90,000,000	20,000,000
Gift tax	2,000,000	.....	.....	2,000,000
Capital-stock tax	93,500,000	93,500,000	25,000,000	68,500,000
Tobacco—			26,000,000	17,000,000
Cigars	43,000,000	31,000,000		.....
All other	330,000,000	330,000,000	330,000,000	.....
Spirits	25,000,000	21,000,000	25,000,000	.....
Automobiles—			6,000,000	3,000,000
Trucks	9,000,000	.....	
Other, etc.	116,000,000	69,600,000	69,600,000	46,400,000
Tires, parts, etc.	25,000,000	.....	.....	25,000,000
Cameras and lenses	700,000	.....	.....	700,000
Photographic films and plates	750,000	.....	.....	750,000

Firearms and ammunition	3,850,000	.....	.....	3,850,000
Smokers' articles	50,000	.....	.....	50,000
Automatic slot machines	650,000	.....	.....	650,000
Mah-jongg sets	1,000	.....	.....	1,000
Works of art	650,000	.....	.....	650,000
Jewelry	8,000,000	.....	.....	8,000,000
Brokers	2,000,000	.....	.....	2,000,000
Bowling alleys, pool and billiard tables	2,100,000	.....	.....	2,100,000
Shooting galleries and riding academies	\$28,000	.....	.....	28,000
Automobiles for hire	1,750,000	.....	.....	1,750,000
Tobacco manufacturers	1,120,000	.....	.....	1,120,000
Use of yachts	300,000	.....	.....	300,000
Opium dispensers	312,000	.....	.....	312,000
Deeds and conveyances	4,000,000	.....	.....	4,000,000
Other stamp taxes	46,000,000	.....	\$43,500,000	2,500,000
Admissions and dues	33,000,000	.....	29,000,000	9,000,000
All other	10,239,000	.....	10,239,000	.....
Total miscellaneous	869,000,000	740,339,000	649,339,000	.....
Total of above	2,749,000,000	2,421,839,000	2,396,339,000	.....
Reduction from 1924	.....	327,161,000	352,661,000	352,661,000

The Senate Finance Committee had amended the bill by striking out the estate tax, Title III, so that the \$90,000,000 estimated revenue from the estate tax for 1926 would result under levies already made under the Act of 1924. It will be noted also the great number of subjects are entirely relieved of any tax. As a result of the conference report, the estate tax provisions of the House Bill were restored, but, as pointed out by Senator Smoot, Chairman of the Senate Finance Committee, explaining the conference report, February 24, 1926, Cong. Rec. p. 4192, the conference report subsequently adopted by both Houses increased the exemption from \$50,000 to \$100,000, with the result that about one-half of the estates theretofore subject to the Federal estate tax would be eliminated altogether. It was within the power and discretion of Congress to retain the estate tax as a subject to share the burden of the Government's fiscal needs, hence the fact that the estate tax was not entirely eliminated rather than the capital stock tax, or tax on automobiles, is not in itself sufficient to show that the estate tax provisions were not intended to produce revenue.

Going a step further, we find that all the machinery of the Act of 1924 for the collection of the tax, inspectors, boards of appeal, etc.—all the expenses—were retained. In the debates in the Senate on this bill, it was pointed out that if the estate tax provisions of the House Bill went into full force and effect, the estate tax would not produce in excess of \$10,000,000 per annum. Some expressed the view that it would cost that much to collect the tax under the machinery provided for by the Act and result in no net revenue to the Government. Others contended that the cost would be less, leaving a small amount of net revenue. But after the House Bill was thus considered the conference report came along and increased the exemption to \$100,000.00, thereby cutting off one-half in number of the estates which would be taxable, and yet all the cost

of collection was retained. When that amendment is considered, the contention made in the Senate that the estate tax would yield no net revenue was undoubtedly well founded, and, if so, there was no warrant for the tax as a revenue producer.

The estate tax provisions, however, bear still stronger evidence of the non-fiscal purpose in this, that the graduated rates of the tax of 1924 were cut in half and the exemption doubled from \$50,000 to \$100,000; whereas at the same time the credit for taxes paid to the States increased more than three fold, from twenty-five per cent to eighty per cent. In House Report No. 1, 69th Cong. p. 38, is the following comparative table as to the changes in the estate tax made by the House Bill:

"ESTATE TAX

	H. R. 1 Act of 1924	
Exemption	\$50,000	\$50,000
Rates:		
Amount not in excess of \$50,000	1 per cent	1 per cent
Amount in excess of—		
\$50,000 and not of \$100,000	2 per cent	2 per cent
\$100,000 and not of \$150,000	3 per cent	3 per cent
\$150,000 and not of \$200,000	do	4 per cent
\$200,000 and not of \$250,000	4 per cent	Do.
\$250,000 and not of \$400,000	do	6 per cent
\$400,000 and not of \$450,000	5 per cent	Do.
\$450,000 and not of \$600,000	do	9 per cent
\$600,000 and not of \$750,000	6 per cent	Do.
\$750,000 and not of \$800,000	do	12 per cent
\$800,000 and not of \$1,000,000	7 per cent	Do.
\$1,000,000 and not of \$1,500,000	8 per cent	15 per cent
\$1,500,000 and not of \$2,000,000	9 per cent	18 per cent
\$2,000,000 and not of \$2,500,000	10 per cent	21 per cent
\$2,500,000 and not of \$3,000,000	11 per cent	Do.
\$3,000,000 and not of \$3,500,000	12 per cent	24 per cent
\$3,500,000 and not of \$4,000,000	13 per cent	Do.
\$4,000,000 and not of \$5,000,000	14 per cent	27 per cent
\$5,000,000 and not of \$6,000,000	15 per cent	30 per cent
\$6,000,000 and not of \$7,000,000	16 per cent	Do.
\$7,000,000 and not of \$8,000,000	17 per cent	Do.
\$8,000,000 and not of \$9,000,000	18 per cent	35 per cent
\$9,000,000 and not of \$10,000,000	19 per cent	Do.
In excess of \$10,000,000	20 per cent	40 per cent
Credit:		
Amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, not in excess of	80 per cent	25 per cent"

As a result of the conference report the lower brackets of the House Bill were slightly changed and the exemp-

tion raised to \$100,000. Otherwise the bill as enacted shows the same comparative changes in the Act of 1924 as the above table.

If it was the purpose of Congress solely that the estate tax should be retained to share a part of the Government's fiscal burden, then why was it the rates were not made a maximum of four per cent instead of a maximum of twenty per cent, with a credit to taxpayers up to eighty per cent on taxes paid to the States? Again, the eighty per cent credit provided for in sub-section B of section 301 of the Act is the very antithesis of an exercise of power to lay and collect a tax for the reason that after the levy of the graduated rates up to a maximum of twenty per cent is complete, sub-section B straightway *rebates* and forebears the collection of a possible eighty per cent of the amount levied. The inquiry as to why this plan was adopted cannot be answered in terms of producing Federal revenue. The provisions of sub-section B being to rebate taxes already levied, there is no escape from the conclusion that the provisions of that sub-section are not "naturally and reasonably adapted to the collection of the tax." And hence the conclusion must follow that the purpose of those provisions was "solely to the attainment of something plainly within power reserved to the States" and not within the taxing power of Congress.

Child Labor Cases, 259 U. S. 20;

Linder v. United States, 268 U. S. 5.

In the case of

Minnesota v. Barber, 136 U. S. text 320,

this Court said:

"It is our duty to inquire in respect to the statute before us, not only whether there is a real or substantial relation between its avowed objects and the means devised for attaining those objects, but whether by its necessary or natural operations it

impairs or destroys rights secured by the Constitution of the United States."

Finding that the estate tax provisions of the Act cannot be justified in terms of producing Federal revenue, we must then resort to the history of this legislation, the economic condition of the country, the supposed economic evil, if any, which Congress was seeking to remedy, in order to ascertain the true intent, operation and effect of the estate tax provisions, and thereby determine whether Congress acted within its Constitutional powers.

Matters of which the Court will take Judicial Notice show that the real Purpose, Operation and Effect of the Estate Tax Provisions are to discipline and coerce the States, particularly Florida, in adopting such Uniform Inheritance Tax Laws as Congress deemed desirable, to Discriminate against such States, and to punish the people of such States as do not see fit to abide the rule prescribed by Congress, Florida being singled out for special attack.

In the case of

New York Trust Co. v. Eisner, 256 U. S. 345,
the Court, speaking through Mr. Justice HOLMES, said:

"A page of history is worth a volume of logic."

The history of this legislation, its true purpose and intent, cannot be literally written in one page. Nevertheless, appreciating the value of such matters where the sovereignty of States is involved, we shall endeavor to bring to the Court's attention such matters as are properly within the scope of judicial notice.

A. MATTERS JUDICIALLY NOTICED.

In *Wilson v. New*, 243 U. S. 332, 61 L. Ed. 760, the Court judicially noticed the controversy between the carriers and the labor unions which caused the legislation, the propositions of the respective parties, the message of the President, the proceedings before the Senate Committee, and the reported proceedings previously had under the Mediation and Arbitration Acts. So here, the messages and official statements of President Coolidge, the economic condition of the country as to which the act was to be applied, the hearings before the committees, and reports of committees are all competent sources for the Court's information. In the case of

Dunlap v. United States, 172 U. S. 65, 75,

the Court judicially noticed the reports of the Secretary of Treasury. So here, the reports and official statements of Secretary Mellon on this subject are competent. In the case of

Holy Trinity Church v. United States, 143 U. S. 457, 463-464,

the Court judicially noticed:

"The evil which it (the Act) is designed to remedy."

Also:

"Contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body."

Also:

"The motives and history of the act."

Also:

"The petitions, and in the testimony presented before the committees of Congress, that it was this cheap unskilled labor which was making the trouble, and the influx of which Congress sought to prevent."

Also extracts from the report of the Senate Committee, and other matters. So in this case, similar matters may be noticed in order to arrive at the true intent, purpose and operation of the estate tax provisions of this Act. In the case of

Stafford v. Wallace, 258 U. S. 499, 66 L. Ed. 736-7,

the Court judicially noticed the data presented to the Committee on Agriculture in order to ascertain "the contemporaneous history and information of the evils to be remedied upon which the bill was framed." So here, the hearings before the Ways and Means Committee will disclose the supposed economic evil of a diversity in the inheritance tax laws of the several States at which the estate tax provisions of this Act were directed. In the case of

Blake v. National Bank, 23 Wallace 307, 317 to 320, and
Binns v. United States, 194 U. S. 486, 495,

reports of committees, explanations made by chairmen, amendments proposed and explanations made thereof in the course of the passage of a bill were judicially noticed. In the case of

United States v. Coco Cola Co., 241 U. S. 265, 281, and
United States v. St. Paul, Etc., R. Co., 247 U. S. 310, 315 to 318, and in
Duplex Co. v. Deering, 254 U. S. 443, 475,

explanations in debate by a chairman of a committee as to the purpose of a bill were held competent. So here, explanations given by Chairman Green of the Ways and Means Committee, and by Chairman Smoot of the Senate Finance Committee, are competent, and when such explanations take the form of a colloquy both sides of the colloquy become competent. In the case of

Johnson v. Southern Pacific Co., 196 U. S. 1,
text pages 4 and 9,

counsel brought to the Court's attention the report of hearings before the House and Senate "Commerce Committees, messages of the President, reports of committees and debates on a bill, the purpose of which was to obviate risk in coupling cars. The Court, referring to what had been pointed out by counsel, at text 19, said:

"The scope of the statute is confirmed by the circumstances surrounding its enactment, as exhibited in public documents, to which we are at liberty to refer."

At page 20, same volume, the Court further said:

"The diligence of counsel has called our attention to changes made in the bill and in the course of its passage, and to the debates in the Senate on the report of its committee. 24 Cong. Rec., pt. 2, pp. 1246, 1273. et seq. These demonstrate that the difficulty as to the interchangeability was fully in the mind of Congress and was assumed to be met by the language which was used."

What we shall now bring to the attention of the Court comes well within the precedents above cited.

B. HISTORY OF THE ESTATE TAX AS A "DEATH DUTY" UP TO 1925.

In order to get a proper perspective of "death duties," we need not go back further than

Knowlton v. Moore, 178 U. S. 41,

where the Court reviewed the history of the subject down to the date of that decision. In 1916 the 64th Congress first adopted the estate tax as a source of revenue, instead of an inheritance or succession tax, such as was involved in the *Knowlton* case. In House Report No. 922, 64th Cong., the Committee said:

"Thirty states have laws imposing inheritance or share taxes both upon direct and collateral heirs. Twelve other states have laws imposing inheritance taxes upon collateral heirs. Your committee deemed it advisable to recommend a Federal estate tax upon the transfer of the net estate, rather than upon the shares passing to heirs and distributees or devisees and legatees. The Federal estate tax recommended forms a well-balanced system of inheritance taxation as between the Federal Government and the various states, and the same can be readily administered with less conflict than a tax based upon the shares."

When the bill was being considered by the House in the committee of the whole, the chairman of the Ways and Means Committee, in response to an inquiry by another member, explained the reason for adopting an estate tax instead of an inheritance tax, as follows:

"We levy the tax on the transfer of the flat or whole net estate. We do not follow the beneficiaries and see how much this one gets and that one gets, and what rate could be levied on lineal and what on collateral relations, but we simply levy on the net estate. This also prevents the Federal Government, through the Treasury Department, going into the courts contesting and construing wills and Statutes of Distribution."

These matters were judicially noticed in the case of

Re Hamlin, 226 N. Y. 407, 124 N. E. 4, 7 A. L. R. 701, 705-706.

It was, therefore, the purpose of the Federal estate tax to set up the Government's "toll gate" at the source, without being involved in the application of State laws of descent and distribution.

Re Inman (Or.), 199 Pac. 615, 16 A. L. R. 675, 680.

The estate tax provisions of the Act of 1926 continue that policy as to the levy of the tax but depart therefrom in the matter of collection.

In 1918, as appears by House Report 767, 65th Cong., 2nd Session, the estate tax was retained and the rates increased, there being greater need for Federal revenue. The Senate Report of that Congress, No. 617, p. 15, recommended a Federal inheritance tax in lieu of an estate tax, believing that an inheritance tax was fairer and more equitable in operation. But in conference the Senate receded and the estate tax of 1916 was retained with increased rates.

In 1924 a surplus of over \$309,000,000 had accumulated in the Federal Treasury, and the demand for reduction of Federal taxation was widespread. The bill prepared by the Ways & Means Committee of the 68th Congress carried a reduction of \$341,000,000, but the estate tax rates were increased from a maximum of twenty-five per cent to a maximum of forty per cent. In that Act for the first time the innovation of allowing a credit of twenty-five per cent for taxes paid to the States on inheritance, legacy, etc., taxes was inserted as sub-section B of section 301.

House Report No. 179, 68th Cong., pp. 28 to 32, purported to explain the provisions of the bill as to the estate tax, but made no mention of the twenty-five per cent credit provision, and it was not mentioned in the views of "Eleven Republicans," p. 65 of the same report.

Senate Report No. 398, 68th Cong. pp. 6 and 7, after quoting the report of Secretary Mellon, recommending the repeal of the estate tax, said:

"In accord with the recommendation as to the reduction of the estate tax rates, the committee recommends the elimination of the provision of the House bill which allows the crediting against the Federal estate tax, up to 25 per cent of the amount thereof, of State inheritance taxes."

The conference report No. 844, 68th Cong., p. 25, by way of explanation, said:

“The House bill provided for an estate tax. The Senate amendment strikes out sections 300 to 304, inclusive, of the House bill, providing for the estate tax, and inserts in lieu thereof provisions for an inheritance tax. The House recedes with an Amendment restoring the provisions of the House bill with the following changes in addition to clerical changes.”

Here again, there was no mention of the twenty-five per cent credit provision. As a matter of fact, but little notice was given to the credit provision as a precedent or otherwise. On February 9, 1926, Senator Simmons, Chairman of the Senate Finance Committee in 1916 and 1917, and since then a ranking member of that Committee, at p. 3304 Cong. Rec., explained how the twenty-five per cent credit provision got into the Act of 1924, as follows:

“No, Mr. President; I might conceivably vote for a reasonable inheritance tax, but I will never vote for an inheritance tax four-fifths of which is to go to the states. We had such a provision going to 25 per cent in the other act. I want to say that it got in that act without my knowledge. I did not discover it until too late. It was a wrong principle. It ought to have been attacked and fought before. But it can be seen how these invasions grow and expand. From 25 per cent it has gone up to 80 per cent under the present proposal.”

Senator Simmons' statement is in exact accord with the decision of this Court in the case of

Fairbark v. United States, 181 U. S. 283,

involving a provision of a Federal revenue act, providing for a stamp tax of ten cents on each export bill of lading. The provision was defended on the ground that it was not a tax or duty on any article exported from any State. But the Court held that the bill of lading was a necessary

part of such exportation of goods, and therefore, that the tax was indirectly a tax on articles exported. At page 294 of the text the Court said:

“What cannot be done directly because of constitutional restrictions cannot be accomplished indirectly by legislation which accomplishes the same result.”

Again, at page 302 of the text, the Court, quoting from *Boyd v. United States*, said:

“It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.”

At text 311 the Court said:

“When the meaning and scope of a constitutional provision are clear, it cannot be overthrown by legislative action, although several times repeated and never before challenged.”

And finally, at text 312, the Court said:

“Indeed, it is only of late years, when the burdens of taxation are increasing by reason of the great expenses of government, that the objects and modes of taxation have become a matter of special scrutiny. But the delay in presenting these questions is no excuse for not giving them full consideration and determining them in accordance with the true meaning of the Constitution.”

So in the case at bar the twenty-five per cent credit of 1924 got a foothold with but little notice in Congress, and the public were too much pleased at the tax reduction carried by the bill to make any protest, even if such provision had been noticed. But on the strength of that precedent the advocates of this device for controlling State action made bold to increase the credit to eighty per cent for police purposes, and not for revenue, with the result

that the eighty per cent credit provision became the storm center of debate on the Revenue Act of 1926.

C. UNPOPULARITY OF ESTATE TAX.

On March 12, 1924, Secretary Mellon, as quoted in Senate Report #398, 68th Cong. 1st Session, pages 6 and 7, said:

"Inheritance taxes are properly sources of revenue for the States. They are a material element in a State budget; they are a comparatively small element in the Federal budget. To deprive the States of this source of revenue—properly their own—is to compel the States to increase taxes and to resort to their principal source of income, which is levies on land. The far-reaching economic effect of high inheritance taxes is not properly understood. These taxes are a levy upon capital. There is no requirement in our law, as there is in the English law, that the proceeds from estate taxes shall go into capital improvements of the Government. In other words, capital is being destroyed for current operating expenses and the cumulative effect of such destruction cannot help but be harmful to the country. Again, estates have to be liquidated to the extent necessary to provide for taxes, and the forced sale of property and securities tends to bring down not only the value of such property and securities but values everywhere. The ultimate effect of this is to bring down the very values upon which the tax is levied and ultimately to destroy the productivity of the tax, both to the State and to the Federal Government."

The Senate by its report just mentioned, protested against the House increasing the rates of the estate tax to forty per cent, and also insisted that a Federal inheritance tax be substituted for the estate tax, but in conference the Senate receded and the House, declining to follow either the Senate plan or the "Mellon Plan," succeeded in its program to increase the estate tax rates to forty

per cent, although the bill as to other taxes reduced revenue by the sum of \$341,000,000. Thus the House succeeded in writing into the law the socialistic theory of "pulling down the top" by breaking up large estates.

On February 20, 1925, President Coolidge, in an address before the National Tax Association, referring to the Revenue Act of 1924, among other things, said:

"I pointed out then that when the inheritance taxes levied by the States be added to this, a substantial confiscation of capital may result; and I suggested the danger of having the States and the Federal Government thus combining to get the utmost possible revenue from inheritance taxes.

This we should seek to avoid. Therefore I suggested that it might be better if the field of inheritance taxation could be left to the States."

See quotation by Mr. Watson, Cong. Rec. Dec. 10, 1925, p. 256. In the same address President Coolidge also said:

"If we are to adopt socialism it should be presented to the people of this country as socialism and not under the guise of a law to collect revenue. The people are quite able to determine for themselves the desirability of a particular public policy and do not ask to have such policies forced upon them by indirection. * * * I do not believe that the Government should seek social legislation in the guise of taxation."

See quotation by Senator La Follette, Cong. Rec. Feb. 10, 1926, p. 3364.

The President thus put himself on record as opposed to such socialistic legislation under the guise of raising revenue, and also as against undertaking to control State policies of taxation by indirection.

In protest against such legislation the Governors of 32 States met in Savannah, Georgia, on June 18, 1925, and unanimously adopted a resolution asking Congress to

repeal the estate tax outright. The general unpopularity and widespread protest was thus summarized by Mr. Mills, of New York, on December 16, 1925 (Cong. Rec. p. 547):

“Mr. Mills. The war came along and we increased our Federal rates and superimposed them on the State rates up to 25 per cent, and still we have no protest. There was no concerted and general attack on the inheritance form of taxation. Then what happened? At a time of profound peace, at a time when we proclaimed to the country there was a surplus in the Treasury so as to permit tax reductions, we undertook to raise the estate tax to 40 per cent; and then from one end of the country to the other you began to hear the cry, ‘Well, if this is what your conception of what an inheritance tax should be, then we are against inheritance taxes as such.’ You did not just see an attack made on that 40 per cent rate. Why, gentlemen, for the last year there have been in this country in full swing a strong popular movement, not directing itself at reducing the tax to a proper point, but a movement directed at inheritance taxes as such. That has been the effect of your reckless, immoderate act of two years ago. Why, State legislature after State legislature meets and passes resolutions not only asking you to repeal the Federal estate tax, but declaring against what in this country has been recognized as a well-established form of taxation—inheritanes in the States. Some of the Southern States now are not just appealing to us to repeal the Federal estate tax, but actually declaring against a State inheritance tax. In other words, gentlemen, by our immoderation we have destroyed the popularity of one of the best taxes in this country, and that is why to-day we should proceed with caution and not do anything that will further the movement.” (Applause.)

In addition to the unpopularity of the estate tax of 1924, revenue by the early part of 1925 was pouring into the Federal Treasury by the hundreds of millions more

than was anticipated when the Act of 1924 was passed. This resulted in a further general demand for a reduction in Federal taxation. To meet the whole situation, the President recommended, and Congress adopted a provision in the Second Deficiency Bill, approved March 4, 1925 (see House Report #1, 69th Cong. p. 2), providing that the Ways and Means Committee should assemble in advance of the 69th Congress and hold public hearings, and thereupon draft a bill or bills to revise the existing Federal Revenue Act. It was pursuant to that statute that the Ways and Means Committee met and began its hearings on October 19, 1925. As we shall subsequently see, the committee, and the House following its leadership, refused again to follow the Mellon plan of repealing the estate tax outright, but instead, decreased the rates, and more than trebled the credit provision for inheritance taxes paid to the States, in order to coerce State legislation of that character, and not for the purpose of raising revenue.

**D. HEARINGS BEFORE HOUSE WAYS AND MEANS COMMITTEE
OCTOBER 19TH TO NOVEMBER 3RD, 1925, DEMONSTRATE THAT
THE ESTATE TAX WAS DESIGNED TO COERCE STATE ACTION
AND NOT TO RAISE REVENUE.**

It appears that these hearings opened with a general statement by Secretary Mellon of the Government's fiscal condition, followed by his detailed recommendations as to each class of tax ordinarily embodied in a revenue bill. On the subject of the estate tax (House Hearings, pp. 6 and 7), he said:

“It is the opinion of the Treasury that the Federal estate tax should be repealed. The reasons for this position have been frequently stated, but I can summarize them as follows:

There is no logical basis for the Federal Government collecting this tax. The right of inheritance is controlled by the States and the Federal tax is based

only upon the theory that to transmit property by death is the exercise of a privilege which can be made subject to taxation, just as we might levy a tax on the privilege of selling property. The present law, with its 40 per cent maximum, has not been before the Supreme Court, and the question has never been determined as to whether or not you can confiscate a large part of the property through a tax on the exercise of the privilege of transferring it. Would a sales tax be constitutional which took the bulk of the property sought to be sold? The States are confronted with no such question. They alone control inheritance. I raise this point simply to show that the tax is one belonging to the States and not to the Federal Government.

Estate taxes have always been a source of emergency revenue. It is only in war periods that the Federal Government has made use of them, and except in the present case they have always been repealed when the emergency ended. They should be saved for this purpose. We ought not to use our reserves in time of peace. We may need them badly when the next emergency arises. There is no emergency now.

Taxation by the Federal Government is going down and that of the States going up. The States need every source of revenue available. In the majority of States the Federal tax directly decreases the property which the States can tax. For example, if an estate pays \$1,000,000 of tax, this is deducted from the net value of the property on which the State percentage is levied. The States get no tax on the value represented by what the Federal Government has taken. Aside from the direct loss of revenue to the States, there is an indirect loss. The present muddle of death taxes in this country could in some cases take more than 100 per cent of what a man leaves. Excessive Federal taxes contribute largely to this muddle. The result must be

that ultimately values are destroyed and with them the source from which the States must take revenue.

Under considerable lower rates the Federal estate tax once yielded about \$150,000,000 a year revenue. This has gradually dropped off to \$100,000,000, last year's revenue from this source being slightly below that of the year before. It is quite within the revenue requirements of the Government to eliminate this tax. If not in one year, certainly the rates might be materially cut in 1926 and the whole tax repealed in 1927. The revenue collections from this tax will exist for some time after the law is repealed. Taxes are not payable until a year after the death of the decedent. There are extensions of payment beyond that date without interest and further extensions with interest. The result is that a repeal of the act effective January 1, 1926, would not be affected at all in revenue collections until after January 1, 1927, and then revenue from the tax would gradually diminish for the next four or five years. So an immediate repeal would not affect the revenue of the fiscal year 1926 and but half of that of 1927."

These recommendations were a repetition with some added emphasis to what he said in March, 1924, a part of his then recommendations being quoted in Senate Report #398, 68th Cong., 1st Session, p. 6.

The hearings before the Ways and Means Committee on the subject of the estate tax proper is covered by pages 293 to 510, inclusive, of the volume embracing those hearings. The examination of witnesses by the committee on the subject of the estate tax is important as showing the economic conditions in the several States and as pointing out that one form of tax to meet the fiscal needs of a State government may be suitable to the conditions prevailing in one State and wholly unsuited to the conditions prevailing in another State. But the questions propounded by Mr. Green, of Iowa, Chairman of the Committee, and

by other members of the Committee, are of greater importance than the answers made by the witnesses, for the reason that the questions of the Committee members disclose the whole program of the Committee on the subject of the estate tax, and demonstrate that the purpose of the eighty per cent credit provision was not to raise revenue, but to coerce the States into the adoption of what Congress might deem to be desirable in the way of uniform inheritance tax laws, and to penalize any State or States which declined to conform to that program. It is for this reason that we shall quote rather liberally from the testimony given by the witnesses, including the inquiries made of the witnesses by members of the Committee.

The first witness to seriously question the constitutionality of the eighty per cent credit provision was JUDGE EARL SCOTT, of Atacosa County, Texas (House Hearings, pp. 301 to 303). He testified in part as follows:

“Judge Scott. It is true that many inconveniences are arising and many inequalities because of the attitude of the different States on the inheritance tax question, but that, gentlemen, is a matter for the States, I take it.

The Chairman. You would not think, then that Florida is coercing the rest of the States, would you, by abolishing inheritance taxes entirely?

Judge Scott. Suppose that is true. Suppose those inequalities do exist—what I am speaking of is this: That you gentlemen are sent here by the people and are elected by the people to provide revenue for the support of the Federal Government. I take it that is no secret that advocates of an inheritance tax by the Federal Government want a provision that that tax shall be paid to the extent that the inheritance tax is not levied and collected by the respective States. I take it that the purpose and object of that is not to provide revenue for the support of the Federal Government, but that by that coercive measure the object is to compel the States, each and

every one of them, to adopt an inheritance tax at the maximum rate provided for in the Federal Government's inheritance tax law.

The Chairman. You mistake entirely the object of it, but I do not want to interrupt you.

Judge Scott. Possibly so, sir. It is that phase of it that I want to discuss, and that alone. I have heard the suggestion made repeatedly that there should be an inheritance tax; that gentlemen here believe that there should be one, and that they do not seek to provide by that means revenue for the support of the Federal Government, but they seek the enactment of this measure in order to coerce and compel the States to adopt a system of taxation which they may not find to their best interests, or to the best interests of their people. It is against that phase of it that we appear here as sovereign citizens of that Commonwealth that we have the honor to speak for. We appear here to protest against that feature of it. We think that you gentlemen have no right to do that; that you were not sent here to pass on any such question as that, or by any such coercive bill to compel the States to adopt a system of taxation which they may not find to their best interests.

I thank you for your attention.

Mr. Hawley. You understand that under the law, in the income tax computation allowance is made for all taxes paid by the income taxpayer for State, county or municipal purposes.

Judge Scott. Yes, sir.

Mr. Hawley. *Then is this proposed income tax credit any more coercive than any other that is allowed?*

Judge Scott. *That may be true; but I have seen it reported in the press throughout the country, and I have heard it stated repeatedly, and so often that I take it that none of us need to delude ourselves as to the purpose of this inheritance tax—that is to*

say, that as to that feature of it the Federal Government does not need the revenue, and is not expected to raise any revenue by it, but the thing they want to happen is that each and every one of the States will be forced, whether they wish to do it or not, to adopt the same inheritance tax that the Federal Government adopts. It is simply a method of forcing upon the States a system of taxation that may be obnoxious to them. It means forcing upon them a tax the collection of which might mean a sacrifice to their citizens, and which they may not have any idea on their own part of adopting. If that be the purpose of it, and if that be the result, we think that you gentlemen should first ask yourselves the searching question as to what you are here for and as to who sent you here.

Mr. Hadley. Irrespective of the purpose of it, and whether that will be the purpose of it or not, *would not the practical effect of that system be to compel the States, or if it did not result in compulsion, would it not result in the States passing such an act as that contemplated, thereby effecting indirectly the repeal of the Federal inheritance tax?*

Judge Scott. Yes, sir: that is my complaint, that the States will be coerced by the Federal power. It is our complaint that the Federal power is not seeking to raise revenue or to perform any duty incident to the Federal Government, but is seeking to compel the States to adopt that system of taxation. We elect our representatives in our legislature and our senators to provide revenue for our State, while you gentlemen are here to provide revenue for the support of the Federal Government and not to apply yourselves to the adoption of a measure of coercion in the raising of revenue by the State.

Mr. Hadley. I am speaking of this matter without regard to the method of it but as to what would be the practical effect of the enactment of that kind of statute. *If you are correct, and I take it that it is your theory that the States would adopt self-protecting statutes of their own in order to keep money at*

home which would otherwise go for national purposes—if you are correct in that, then, would it not have the effect of destroying the very purpose of the Federal statute for national revenue purposes?

Judge Scott. It would; yes, sir.

The Chairman. Would not the practical effect of it be—I will not ask you that as a question, because it does not need an answer—would not the practical effect of the repeal of the Federal inheritance tax be to enable States like Florida to coerce other States into levying merely a nominal tax to prevent their wealthy residents from taking up a nominal residence in Florida for the purpose of evading the tax?

Judge Scott. You could not ask a question that would illustrate more strongly to my mind what we are talking about.

The Chairman. Would you have the different States bidding against each other in that kind of way?

Judge Scott. Each one of us is peculiar, and when we have a malady or an ailment we prefer to choose our own physician instead of having one forced on us by others who have no authority to force him on us. We prefer to decide for ourselves, or to have our own physician decide, what medicine we shall take, and not have some one whom we have not employed to tell us what medicine we shall take, or that we shall all take the same medicine and the same dose, whether we like it or not and regardless of what the dose is. This thing will automatically regulate itself between the States to their best interests. We do not like to be coerced by the Federal Government in a field which they have no right to trespass upon.

Mr. Chindblom. This argument has become so personal that I would like to ask the gentleman if he thinks that Congress is without power to pass an estate tax?

Judge Scott. No, sir; I do not.

Mr. Chindblom. I am inclined to agree with the gentleman.

Judge Scott. I have never looked into the question of the power. I assume that you have the power to pass such a law, but was the motive behind it that I was protesting against. I was not protesting against this undertaking to do indirectly what you cannot do directly.

Mr. Chindblom. Congress has not done it.

Mr. Hull. You gentlemen are speaking on the assumption that a majority or most of the States do not desire to develop a substantial system of inheritance taxation.

Judge Scott. No, sir.

Mr. Hull. Then, assuming that ninety-five per cent of the States have represented to us that they are desirous of perfecting by uniform co-operation or understanding a system of substantial inheritance taxation, what could help a majority of them to do that more effectively than to have Congress, while they are struggling to accomplish that desired end, aid them in maintaining a *uniform system*, so that one or two States could not defeat the purposes of ninety-eight per cent of the States by bidding for the immigration of people by making them free of any kind of taxation?

Judge Scott. Well, I do not know what the views of the other States may be. I am a Texan, living down there in the brush, and I have not had much opportunity to inform myself on the public opinion of the country, but, so far as Texas and its best citizenship are concerned, I think they feel that they would prefer to solve their problems and originate their own revenue measures without the intervention of the Federal Congress.

I thank you very much for your attention."

After hearing several witnesses representing tax clubs, the committee heard the testimony of several Governors. The Governors of 32 States, as previously mentioned, had met in Savannah, Georgia, in June, 1925, and had unanimously adopted a resolution favoring the entire repeal of the Federal estate tax, and those of the Governors, or

their representatives who appeared before the Committee came, as their testimony shows, for the purpose of supporting that resolution. But the course of testimony given by the Governors and inquiries made of them by members of the Committee show that the Committee took the Governors unawares on the proposition of allowing a credit up to eighty per cent of any inheritance, legacy, etc., taxes that might be paid to the States. The Committee held up Florida to the several Governors as a bugaboo, and held out the prospect that the action of Florida in November, 1924, in adopting a constitutional amendment prohibiting any future State inheritance tax would operate to withdraw from their several States their wealthy citizens, thereby depriving them of a material source of revenue. Inquiry was then made of each of the Governors as to whether they would prefer some plan which would prevent one State bidding against another in such manner, to which the Governors responded, some saying that they had not considered such plan and were not ready to commit themselves for the reason that such plan might infringe upon the constitutional rights of the States—however, that if the Committee could constitutionally work out such plan, they would in general be in favor of it.

Governor WALKER, of Georgia, was the leading spokesman on behalf of the Governors (House Hearings, pp. 336 to 345). Governor WALKER opened his statement by quoting the resolution adopted by the 32 Governors at the Savannah conference. His statements and the inquiries made of him by the Committee were in part as follows:

“Governor Walker. I desire to say for myself, representing the State of Georgia, that our people are earnestly back of this resolution. We feel that this is a field within the exclusive jurisdiction of the States, in the matter of taxation. We feel that this Federal inheritance tax cannot and could not have been passed but as a war measure; that it is a matter that should be left to the States, and Congress, we hope, will retire from that field.

Mr. Chairman, before taking my seat, I will say that we have a number of Governors here representing their States and we ask that the Committee extend to them the courtesy of a personal hearing for a brief time. * * *

The Chairman. Just one question, Governor. I believe you have no inheritance tax in your State?

Governor Walker. We have and we have not. We have had until this last summer, and *this summer our legislature passed a bill taxing our people twenty-five per cent of the amount levied by the Federal Government. This was done in recognition of the provision of the Federal law, as I understand it, allowing a credit of twenty-five per cent of the total amount of the inheritance tax.*

The Chairman. You have a tax on real and personal property, have you?

Governor Walker. Yes, sir; we have in operation the old ad valorem system entirely, which, I think, I may say in passing, is a serious wrong, and very fatally defective system. My whole administration has been devoted to an attempt to abolish the old system.

* * *
Governor Walker. I want to say that the people who oppose the income tax have argued that the great prosperity of Florida has followed and has been based upon their constitutional amendment prohibiting the levying of an income tax or an inheritance tax. But I do not think that; I think the current of Florida growth started a number of years before that amendment was adopted. * * *

Mr. Crisp. Governor Walker, is it your idea that if the Federal Government abandons the inheritance tax and every other subject of taxation that may be abandoned by the United States, that opens up to the respective States a chance to derive revenue from those sources, and that it will go far toward reducing the ad valorem taxes on real estate and other property?

Governor Walker. Exactly so. We feel, so far as

the matter of right is concerned, that the Federal Government has no legal right to invade that field, except in case of emergency or as a war measure. We may be wrong about that, but that is the way we feel about it.

Mr. Garner. As I understand you, Governor, as a matter of principle, you favor the abolishment of the estate or inheritance tax by the Federal Government?

Governor Walker. I do.

Mr. Garner. Do you believe that taxes ought to be, as far as possible, equal and uniform throughout the United States?

Governor Walker. I do; yes.

Mr. Garner. Can you tell the Committee of any method by which that result can be attained other than through the Federal Government?

Governor Walker. I have not studied that question at all, Mr. Garner, and I am unprepared to answer your inquiry. I have not given any consideration to that thought. I want to say I am expressing my own personal views. My State has practically abolished the inheritance tax. I want to say I think it was following the lead, the artificial lead, and the spirit, which I do not approve, of the State of Florida.

Mr. Garner. The State of Florida has, as I understand it, a constitutional prohibition against the levying of an estate tax and an income tax.

Governor Walker. Yes.

Mr. Garner. As I understand it, you favor both those taxes, and it is undoubtedly desirable that taxes in this country be equal and uniform throughout the country, or else the rich people would undoubtedly go to Florida to escape taxation. So I repeat my question, do you know of any method by which that equality can be attained except through the Federal Government?

Governor Walker. I do not—at least, I am not prepared to discuss that question at all. * * *

Mr. Garner. (Interposing) If Congress arranged

the estate tax from a Federal standpoint so that it did not invade State rights and gave you back every cent you levied in your State, would that be acceptable to you?

Governor Walker. I am opposed to the inheritance tax on the ground that it is an invasion of State rights, and therefore I would not favor the permanency of that type of taxation as a matter of principle.

I would like to say, Mr. Chairman, that you will hear during the morning a suggestion that may meet some of the views of the gentleman from Texas, and that is that this legislation should be enacted, but that there should be a provision included to the effect that it shall not take effect until a period to be agreed upon in the future—probably in six years—with the idea, Mr. Garner, that there should be enacted *uniform State laws*. That proposition may partly, at least, meet your views.

I desire to make it perfectly clear, however, that my suggestion has not been passed upon by the conference of governors and representatives of the States. That is a matter that was not presented to us and we have not acted upon it. Therefore, we are not authorized to speak for our people on that.

We are authorized to and do earnestly submit to you the substance of this resolution, namely, an appeal to Congress to provide that the Federal Government shall retire from the field of inheritance taxation in the manner, under such conditions, and at such time as the wisdom of Congress may suggest. * * *

Mr. Rainey. It is the principle; the rates may be different. The Governor thinks that they ought to be uniform in all the States.

Mr. Garner. Governor, the statement was made here yesterday that in the State of Iowa, one-seventh of the taxes necessary to run the State government were collected through an inheritance tax.

Governor Walker. Mr. Garner, I am sure that you know more about it than I do, but my study has

shown me that there is the very widest difference in the systems of taxation in the States.

Mr. Garner. Yes, indeed, especially in the inheritance tax.

Governor Walker. I am not prepared to state that.

Mr. Garner. The thought has been presented to us for the last five years, every time we have had a hearing here, *that the most desirable thing was to have equal and uniform taxes with reference to inheritances throughout the United States.*

Governor Walker. Of course, we might just as well be frank about it. If one State, particularly an attractive State for other reasons, abolishes all inheritance taxes, it is simply establishing an asylum for tax dodgers.

Mr. Garner. That is right. I think that you will agree with me that that is quite objectionable to our form of government in this country—that is, to have some place where people can rush to avoid taxes.

Governor Walker. Yes; I think it is un-American, undemocratic and unfair.

Mr. Garner. *That is exactly the reason why, Governor, I believe the Federal Government must take a hand in it in some way in order to obtain uniformity of taxation in this country.*

Governor Walker. I cannot say that that follows, exactly. I certainly have the greatest respect for your judgment, and I know that you have studied it infinitely more than I have, but I do think that the principle of State rights, as I have thought for many years, enters into it.

Mr. Garner. I agree with you, Governor.

Governor Walker. Perhaps more now than ever, because of the tendency to encroach upon those State rights. I do think that even the suggestion you made is of less importance than that. I believe that the Government should be careful of the mud-sill principles on which our Government is founded.

Mr. Hawley. If we proposed through the Nat-

ional Government to establish a uniform system of taxation throughout all the States, it would involve our going into the field of taxation on real property and every other kind of property, would it not?

Governor Walker. Well, sir, I am sure that my friend from Texas will pardon me from saying that the idea of uniformity in taxation—

Mr. Garner (Interposing). I only applied it to the inheritance tax.

The Chairman. Nobody has made any such proposal, so I do not think we need worry about that.

Governor Walker. The only uniformity I have ever found in taxation is the uniformity with which every man is willing for the other man to pay the taxes.

The Chairman. Right in that connection, with reference to States like Florida, which according to their advertisements at least, is a very attractive State in which to live, if they became a place where people are entirely exempt from *inheritance taxes* it is going to be difficult, if not impossible, for the other States to levy any substantial rate. * * *

Mr. Chindblom. If the State of Florida chose to adopt that system, do you think the Federal Government should exercise a *censorship over them*?

Governor Walker. I do not think they can. That is my idea of the difficulty of the problem that is before you. I do not see how you can do it. If Florida insists on her right to keep out of this field of taxation, I do not believe that there is any power that will force her to agree to any rules or regulations as to uniformity. I am not a profound constitutional lawyer, but that is my view.

Governor WHITFIELD, of Mississippi (House Hearings, pp. 345 to 352). His testimony was in part as follows:

“Mr. Hull. Governor Whitfield, I have observed about three classes of opinion revealed here in connection with this question.

Governor Whitfield. I am surprised that there

are not more, considering the complexity of the situation. * * *

Mr. Hull. Now, in order to do that, instead of repealing this law outright, dumping it back on the States, and thereby permitting many of them to go without any law at all and others with very partial rates in the law, thereby handicapping the uniform development of this system by the States so they can procure real revenue from it, they favor the working out of the best methods of cooperation between the States and the Federal Government *for the purpose of developing the law uniformly in the States. That is the real problem, it seems to me.*

Governor Whitfield. I think I have already discussed that, to some extent. I agree with you on that proposition. If only one of the jurisdictions can levy the tax, I think it belongs to the States. I do not think there is any doubt about that. But if it be constitutional, and I suppose it is—I do not know whether it has ever been tested by the Supreme Court.

The Chairman. The inheritance tax?

Governor Whitfield. Yes.

The Chairman. Yes, it has.

Governor Whitfield. If it is constitutional, then whatever arrangement is best for the Government and the State ought to be followed. That is my opinion.

I think there are two ways by which you can get at it. One good way is to let the Government levy the tax, if it be constitutional, and then give to the State a definite per cent of the tax.

* * * *

Mr. Rainey. *But if some scheme could be devised by which the States would be compelled to levy the same death dues, would you think it would be desirable?*

Governor Whitfield. You would have to let me figure that out in order to see how it could be done, or whether it could be done or not.

Mr. Rainey. *It could not be done by the States.*

Of course, there is no agency that could devise methods by which such taxes could be made uniform except the Federal Government. Now, suppose the Federal Government could devise a method by which death dues in all the States would be uniform, so that Florida would not have any advantage over you, would you be in favor of it?

Governor Whitfield. Of course, I would hate to have to commit myself as being in favor of any plan until I knew exactly what it was, or before I knew by what plan you proposed to make it uniform."

Governor TRINKLE, of Virginia (House Hearings, pp. 353 to 360). His testimony in part was as follows:

Governor Trinkle. * * * Now, some gentlemen who have been working on this proposition, gentlemen whom we can truthfully class as experts, are going to present to you a scheme, but whether it is ideal or not or whether it is perfect or not I am not in a position to say. However, I do want to ask of you gentlemen that you give this program—and I understand you have seen it—of the National Tax Convention your most serious consideration in order that we may solve the problem. They suggest, you know, the proposition of a rebate up to 80 per cent.

Mr. Crisp. You understand, Governor, that the Secretary of the Treasury has advocated the repeal of this tax, and says that the fiscal needs of the Federal Government are such that the Government can get along without the revenue derived from the inheritance tax.

Governor Trinkle. That is my understanding of his report on the matter and if that be true—and I hardly know to what better source we could go for information of that character than to the officials who are in charge of this character of work—as I say, if that is true, then, gentlemen, I believe that I express the view of the great majority of the busi-

ness men of this country when I say that this source of taxation should in some way be given to the State Governments. Now, whether you should release it absolutely to the State Governments at this time or within some definite future time is a debatable proposition. I do not believe that it is right for the States to be in competition, one with the other, to have rich men become residents of the states, and if there is no way by which the States can secure uniformity in such taxes, then as a matter of wisdom and as a matter of business prudence, it might be wise for the Federal Government in some way to use its power and strong arm to see that it is done. Now, whether that could be done through the Federal Government collecting the tax, as was suggested by a gentleman there in the rear, and rebating it to the States, or whether it should be done through a rebate of 50 per cent, 75 per cent, 80 per cent, 90 per cent, or whatever per cent it may be, is a debatable matter and, it seems to me to be a matter that requires expert and scientific study in order to arrive at an intelligent answer to that proposition.

Mr. Garner. *It is desirable, is it not, to have uniformity of taxation applied in the States and throughout the entire United States?*

Governor Trinkle. Absolutely.

Mr. Garner. *That is very essential, or else men will fly to havens of refuge where they can escape that character of taxation.*

Governor Trinkle. * * * Florida might appeal to you because your investment was of a kind that would make it appeal to you. It could make an exemption that would appeal to the rich. Then Minnesota might have an exemption of a different character that would appeal to the Chairman. I think that when we find the States of this Union each one bidding against the other to help men of means to get rid of their taxes the Government of this country of ours ought to announce in thundering tones that there is nowhere in the confines of this great land of

ours where a man can go and escape his just proportion of taxation.

I feel that you gentlemen are in a position to help us meet that condition and I feel that we ought to meet it fearlessly and that we ought to meet it courageously. This thing of the States bidding against each other for citizenship is absolutely disastrous. The State of Florida—and when I refer to Florida I am not doing it in a spirit of criticism or of antagonism, but as a matter of practical illustration—as I was saying, *the State of Florida may be in a position to do without the inheritance tax and the income tax because they have a different plan of taxation. Their plan may be different from that of Virginia. If you were to wipe out in the State of Virginia the inheritance tax and the income tax you would put us into bankruptcy.* Our people have been trained to pay those two taxes, and they are paying them with a reasonable degree of satisfaction, and, I might say, with a minimum amount of complaint. We cannot shift to another form of taxation in order to compete with Florida. In that situation we have nowhere to go for protection, so far as I am able to see, except to the Federal Government.

* * *

Mr. Garner. If we should have a uniform income and estate tax, there could be no variations from it, because it would apply to every State in the United States, whereas, if the Federal Government leaves either form of taxation to the States then you have Florida bidding against Virginia.

Governor Trinkle. I notice that some of the States are even adopting Constitution amendments to provide that.

Mr. Garner. *On the other hand, if this tax were imposed by the Federal Government, the Federal Government could rebate to the citizen of the State, or make a reduction in the tax of the citizen of the State, equal to the amount of the tax to be paid to the State. For instance, if you levied a 20 per cent inheritance tax in Virginia and the Federal Govern-*

ment made that deduction, the man in Florida would have to pay the same amount either to the State of Florida or to the Federal Government.

Govenor Trinkle. Yes.

Mr. Garner. *That would promote uniformity in taxation throughout the United States.*

* * * *

Mr. Rainey. Inasmuch as your State is so heavily burdened with taxation, more than any other Southern State, you will be in favor of the Federal Government entirely giving up the field of death dues and surrendering it to the States, provided some method could be devised by which the States *could not take advantage of each other by levying the tax.*

Governor Trinkle. Absolutely. If the Federal Government feels that it can spare the tax—and on the basis of Mr. Mellon's report it seems that it is possible to do that—I think that it should be given up. I am afraid, however, without having given it any great thought—and this is rather like horse-back—I do not believe it would be wise to do it at one fell swoop. I think there must be a balance wheel provided by the Government.

Mr. Rainey. Do you agree with the proposition that the Government ought to abandon this field and leave it entirely to the States, permitting the States to charge what they please and to handle it as they please?

Governor Trinkle. That is a proposition that is giving me anxiety. *I do not altogether agree with the gentleman over here, or apparently with the Chairman, that Florida should be allowed to do anything she pleases without some regard to her sister States.*

The Chairman. *I beg your pardon, if you attribute that opinion to me. If you attribute that to me you have misunderstood me entirely. I entirely agree with you on that subject.*

Governor Trinkle. Then, I misunderstood you. I understood that an inquiry was made of this gentle-

man as to whether Florida did not have the right to do anything *she wanted* to do, and I understood you to agree to that. I also understood Governor Walker to agree to that.

The Chairman. *No, you misunderstood both of us.*

Governor Trinkle. I may have done so; but what was the object of the question that this gentleman asked, unless it was to elicit an answer, yes or no.

Mr. Chindblom. *I did ask the gentlemen whether he thought the United States should set up a censorship over the action of a sovereign State.*

Governor Trinkle. Was it answered affirmatively?

Mr. Chindblom. I would not be responsible for the answer.

Mr. Hull. If 75 per cent of the States and the Federal Government as well, feel very keenly that the States should realize several hundred million dollars cash from this system, and that they can only do so by securing uniformity among the States in carrying out that purpose, and when that purpose can be overridden by the action of one or two States, this plan would involve no more coercion than the minority can now exercise over the majority, would it?

Governor Trinkle. I think you are right. I am a believer in this principle: That States as well as men should so shape their lives and their conduct that they may always deal justly with others, and if anyone is not willing to do it, there should be some power to make him do it.

The Chairman. *To make my position clear, I think that if the Federal inheritance tax were absolutely repealed many wealthy citizens of your State—and there are many of them—would take up a nominal residence in Florida, and you would not only lose the inheritance tax but the income tax. You could not enforce either one against them. If you made the tax any more you would have a general exodus of them.*

Governor Trinkle. Yes.

Mr. Garner. *There is no other power that could reach Florida in this situation except that of the Federal Government.*

Governor Trinkle. None that I know of, no, sir.

Governor Trinkle. Well, Mr. Rainey, I do not know that the boom in Florida is primarily or essentially due to the passage of this constitutional amendment. I do think the physical conditions and the climatic conditions in Florida are naturally going to make it a prosperous State. I think it is going to continue to grow, although not probably with the spirit of activity that is there now.

Mr. Rainey. Governor, it has always had those climatic conditions.

Governor Trinkle. But they have not been appreciated.

Mr. Rainey. But they have never had that constitutional amendment until last year.

Governor Trinkle. Not until recently.

Mr. Rainey. And the boom in Florida comes right along with that constitutional amendment.

Governor Trinkle. I think that that helps, certainly, to emphasize that boom in Florida, but I am not prepared to say that all of the development in Florida is due to that law. I just think, naturally, that there are people of wealth, and they are going to be more every day, who want to get from snow to sunshine in 24 hours, and just as long as there are people of that caliber, just so long Florida is going to grow substantially. But I do think that this amendment has helped the boom. I know one case where one of the wealthiest men in the country moved his residence to Washington in order to get rid of the income tax. That is just one instance.

Mr. Crisp. Governor, a good deal has been said about Florida doing away with this inheritance tax. If the Federal Government should abandon the estate tax then there would be no estate tax in the City of Washington. The City of Washington would be

just as much a refuge for rich taxpayers who wish to escape the inheritance tax as Florida. Congress being charged with the responsibility of legislation for the District of Columbia, if they should abandon the inheritance tax in the States, then, in your judgment, should not Congress pass some inheritance law for the District of Columbia?

Governor Trinkle. If not, they are setting a mighty poor example for the rest of the world.

Mr. Crisp. I agree with you; but I just wanted to get this in the record.

Mr. Rainey. Of course it would be unthinkable that Congress should exempt the District of Columbia."

Lieutenant Governor NOLAN, of Minnesota (House Hearings, pp. 361 and 362). His testimony was in part as follows:

“Mr. Nolan. Mr. Chairman, gentlemen of the Committee, I am here representing Governor Christianson of Minnesota.

The Chairman. I was just informed the other day that already over in the neighboring State of Minnesota five extremely wealthy men in one city have emigrated to Florida in order to escape the inheritance tax in their own State, and also the income tax.

Mr. Nolan. Well, that is probably true. I am not here with any authority to commit the governor to any statement; but, of course, I think that he feels, and I think many of us in our State feel that the levying of an inheritance tax is a function of the State Government. We have had an inheritance tax in our State for some years, and it has worked out very successfully.

Mr. Carew. Would you like to have the people who pay it go to Florida to escape it?

Mr. Nolan. I do not care whether they go there or not. If they want to go there, that is their privi-

lege. This is a free country. They can go to Florida or any place where they want to go.

The Chairman. *Then we will go on with the next witness. I am glad to know that you are perfectly willing that the wealthy should escape the taxes.*

Mr. Nolan. I do not feel that way about it; but I feel that we cannot help it if Florida offers inducements.

Mr. Rainey. *Would you want to keep them from offering those inducements if you could?*

Mr. Nolan. If we could; yes. But I do not know how we could do it.

Mr. Nolan. I will say that so far as we are concerned, in our State, we are not trying to relieve anybody from paying his just share of the taxes.

Mr. Rainey. *Do you know of any other agency except the Federal Government, which, under its Constitution, can do this? Do you know of any other agency that can make a regulation which would in effect, compel the States to make these taxes uniform, so that one State would not have any advantage over another?*

Mr. Nolan. I do not know of any other agency, and I question whether it is a proper duty for the Federal Government to interfere with the States in this respect.

Mr. Rainey. Then you want the result accomplished which you say you favor, but you are opposed to its being accomplished by any possible agency.

Mr. Nolan. I say I am favorable to any system of uniformity if you can work it out; but I am speaking from the point of view of our own State.

Mr. Rainey. Do you know that your State is more heavily burdened with taxes than any other State in the west north central group of States?

The Chairman. (Interposing) Mr. Rainey, if you will pardon me, this gentlemen wants to get away. He has requested only five minutes."

Governor McLEAN, of North Carolina (House Hearings pp. 362 to 368). His testimony was in part as follows:

"Governor McLean. * * * I want to say in the beginning that I am strongly in favor of the principle of death duties, or the inheritance tax, as we call it in our State; and our whole purpose is advocating the repeal of the Federal estate tax is in order that the State may occupy that field. It is very important in our State, Mr. Chairman, because we derive all of our taxes for State purposes from indirect sources—incomes, inheritances, franchises and business taxes.

Mr. Kearns. What is your inheritance tax rate?

Governor McLean. Our system is so complex that it is very difficult to say. In one instance we levy as much as twenty-five per cent, where there are collateral relations and so forth. The tax is very low where the property is transmitted to the wife or to the children. If it is transmitted to collateral relations the brackets are high.

There has been a good deal of discussion as to the method of bringing about some uniformity in the various States. Of course, I realize that that is a very difficult question, as the gentleman from Texas points out. But you have that same trouble in reference to all taxes. Under our dual system of government it is practically impossible to have complete uniformity in the levying of taxes by the States.

Now, we are not so much interested in the processes that you will set up to bring about the result, or the machinery which you will adopt, but we are tremendously interested in this matter of leaving the benefit of the estate taxes to the States.

Mr. Garner. Governor, may I ask you a question right there?

Governor McLean. Yes.

Mr. Garner. If the Congress succeeded in devising a scheme of estate taxes, under a Federal statute, which did not interfere in any particular with

the taxes paid by your citizens, whatever they might be—they would be levied by your State, and would not be collected by the Federal Government—that would meet your problem insofar as the taxes of your State are concerned, would it not?

Governor McLean. Yes, if you can work that out from a practical standpoint. I think that would be very difficult, however.

Mr. Garner. If we gave a citizen of your State the right to deduct from his *Federal estate tax* all the taxes he paid in the State of North Carolina, then you could not be heard to complain?

Governor McLean. No; because the thing we are after principally is the revenue.

Mr. Garner. Yes; it is the revenue, and if Congress gave him the right to deduct from the taxes due the Federal Government on his estate all the taxes that he paid in North Carolina, then North Carolina would have no right to complain from a financial standpoint?

Governor McLean. No.

Mr. Hawley. Governor, that would only be a partial solution in relation to the situation raised in the Florida situation.

Equal distribution of the burden of taxation arising out of Federal estate taxes will not be effected, so far as the receipts of revenue by the States are concerned, under any proposition to credit to any taxpayer the estate taxes paid to his own State, until all the States have adopted a uniform law with identical rates. Otherwise an inequality will exist, and the amount of it will be the difference between the amounts collected on similar estates by the several States. If the rates in some States are double, for instance, the rates of other States, estates will pay in the former twice what are paid in the latter on similar estates, and the differences now existing in the rates provided by the estate tax laws in the several States are material.

Los Angeles is an instance of a city and community which has grown greatly in recent years, al-

though during that period California has had in force an estates tax law of considerable proportions. That tax did not drive persons of large fortunes out of the State, nor did it act as a bar to deter persons of large fortunes removing to it.

The Chairman. No; that is not Mr. Garner's proposition.

Mr. Garner. Not at all. The citizen of North Carolina, having deducted whatever tax he paid in North Carolina and then paying the balance to the Federal Government, would pay exactly the amount of tax that the man in Florida paid, because the tax then would be the same, except that *the citizen of North Carolina in place of paying the entire one hundred per cent to the Federal Government, would deduct the tax that he paid to North Carolina and send the balance to Washington, whereas the man in Florida would send the entire amount to Washington. That is the only difference.*

Mr. Collier. *The result would be that Florida, or a State similar to Florida, would repeal any constitutional amendment that it might have on the subject, unless they wished all their inheritance taxes to go to Washington instead of to their State Government.*

Governor McLean. The only difficulty that I can see in reference to that plan would be that the Federal Government might not levy as large an inheritance tax as we would want to levy under our State plan.

Mr. Garner. Under that condition, then, your citizens would not pay the Federal Government any tax whatever, and you could go just as high as the moon in respect to your State taxes.

Governor McLean. I see. In other words, the State might levy any amount of tax that it saw fit?

Mr. Garner. Yes.

Governor McLean. And it would be offset only to

the extent that the Federal tax would be levied against the same estate?

Mr. Garner. Exactly.

Governor McLean. Well, I think that is very interesting, to say the least, and so far as I am concerned, I have no definite opinion as to how the result should be arrived at. I think it is a matter for you gentlemen to work out after careful consideration. But I am very firmly of the opinion that the benefits to be derived from these death duties should go to the States.

Mr. Garner. But you also agree, Governor, I take it, that *in order to accomplish that result there should be some uniformity throughout the United States, so that when you levy a substantial death tax the wealthy citizen of North Carolina will not flee your State and go to Florida for the purpose of escaping that tax?*

Governor McLean. Yes; *I think that is very desirable, if you can bring it about. But, of course, I realize that under our dual system of government, it is practically impossible ever to have complete uniformity in taxation.*

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Mr. Rainey. Governor, if the Mellon plan contemplates an abandonment by the Federal Government of the entire field of death dues and the relegation of it to the States, permitting the States to occupy it or not, as they please, would you be in favor of the Mellon plan?

Governor McLean. You mean in favor of the Federal Government's abandoning the estate tax?

Mr. Rainey. And then leaving it to the States, permitting the State to occupy it or not, as they please. Would you be in favor of the Mellon plan?

Governor McLean. Well, I would in principle, but I can see where there might be considerable difficulty.

Mr. Rainey. Would you be in favor of it with modifications, if something *could be done to COMPEL*

the States to occupy the field so that they could be fair toward each other?

Governor McLean. *I think that should be done if possible; if it is practicable to do so, undoubtedly. Mr. Rainey. I agree with you, Governor."*

Governor McLEOD, of South Carolina (House Hearings, pp. 368 to 371). His testimony was in part as follows:

"Governor McLeod. Mr. Chairman and gentlemen, I do not know that there is anything that I can add to what has already been said.

In my State we favor the withdrawal of the Government from the field of inheritance taxes and leaving that to the States. The methods of working that out will be left, of course, to Congress, under the leadership of your Committee.

Mr. Rainey. If the Mellon plan contemplates the entire abandonment of the field to the States, permitting the States to have that field to themselves, would you be in favor of the Mellon plan?

Governor McLeod. What is the Mellon plan?

Mr. Rainey. It contemplates, entirely and unconditionally, the abandonment of that field by the Federal Government, and permitting the States to compete with each other for wealthy men to locate within their borders.

Governor McLeod. I do not think that competition has become serious enough to be dangerous, as a national matter. But I would prefer the modified Mellon plan of a gradual reform and return. I would prefer to have that. I would prefer to have the Federal Government rather than risk competition.

Mr. Rainey. I understand you are for gradual reform. I do not know what your reasons, but we will let that go.

If the administration proposes to abandon this field entirely, and at once, and let the States occupy

it as they please, are you in favor of the administration proposition?

Governor McLeod. As a dernier resort I would, but I would prefer the other.

Mr. Rainey. If something can be done which *would compel the States to occupy this field and occupy it by imposing, however, certain minimum taxes*, would you not favor some arrangement of that kind, if it can be done?

Governor McLeod. I think I would if it was fair in its distribution of this inheritance tax.

Mr. Rainey. *If we compelled every State to levy the same minimum?*

Governor McLeod. If it was fair and equitable in its distribution to the States.

Mr. Rainey. And let the States occupy the field entirely and apply the revenue entirely to the liquidation of their own expenses, provided we devised some means of *compelling the States to do it*; would you not favor it?

Governor McLeod. I think so.

Mr. Garner. If there was an arrangement by the Federal Government under which, when a citizen of the United States died, there could be deducted the amount due the State of South Carolina of taxes he had to pay in the State, sending the balance to the Federal Government, it would not injure your exchequer?

Governor McLeod. No, sir; except that I would—

Mr. Garner. (Interposing) *He would have no occasion to flee from your State to Florida, or even to a warmer climate to avoid the inheritance tax due your State?*

Governor McLeod. That is true, but speaking—

Mr. Garner. (Interposing) *You will agree that the plan suggested that the Federal Government devise some scheme whereby we could have the inheritance taxes uniform as far as possible throughout the Republic, is desirable, will you not?*

Governor McLeod. *In that case the Federal Gov-*

ernment would be established as a disbursing agency for the State Governments.

Mr. Garner. Not at all. Your citizens would have deductions allowed under certain conditions. Now there are deductions both for the estate and income taxes, and a great many deductions are made. But he would simply deduct from the amount what he would owe the Federal Government whatever he would pay your State.

Governor McLeod. *How would you justify the Federal Government levying taxes merely for that purpose unless those taxes are needed for the expenses of the Government?*

Mr. Hull. *But there would be uniformity.*

Mr. Carew. *We are going to use this power to effect a great reform."*

Governor PEAY, of Tennessee (House Hearings, pp. 371 to 375). His testimony was in part as follows:

"Governor Peay. * * * It is our assumption that this Committee and the Congress are going to reduce the Federal taxes in the country and that the revenue now being obtained from the Federal inheritance tax can be spared, and that being true, our business people and taxpaying classes are exceedingly anxious for this tax to be repealed. That is for several reasons.

* * * * *

Mr. Rainey. A moment ago, as I understood you, you questioned the right of the Government to levy an inheritance tax or an estate tax upon the theory that the Federal Government did nothing to earn it. Of course, the Constitution permits the Federal Government to occupy that field, and the Constitution does not give many powers to Congress. But this is one of those powers it does give Congress the right to levy certain taxes conditioned upon the taxes being uniform in the field they occupy. You agree that is a wise provision in the Federal Constitution?

Governor Peay. Yes.

Mr. Rainey. If the Federal Government should abandon the field of Federal taxation which the Constitution requires that it shall occupy, by levying uniform taxes, would you be in favor of carrying that principle to the States and *devising if Congress can do it some method by which these estate taxes shall be uniform?*

Governor Peay. If that can be done, it would be desirable, perhaps. I never thought about it in particular, but I do not see how you would execute such an idea unless it is possible to levy this tax uniformly and collect it from all the States, making it so high that the State would be willing to yield what they are receiving from their State taxes to get what they might receive under the Federal law or under some plan whereby the Federal law is conditioned that those States which did levy a State inheritance tax would receive nothing under the Federal law. Some plan of that sort, with the details properly worked out, would be acceptable to the country, in my judgment. At least to those States that are now collecting a State inheritance tax, such as Tennessee.

Mr. Rainey. Suppose an abandonment by the Federal Government contemplates some method being devised by which citizens of the States would pay substantially as much estate taxes as they now pay, adding together the taxes which the States levy on estates and what the Federal Government levies on estates, unless the States desired to collect more, would you not favor the proposition if we could work it out?

Governor Peay. I can see how that would be all right if it could be worked out satisfactorily so that the Federal Government would not take too much authority if the States were not embarrassed by having a horde of Federal agents in our State; also, provided that the tax was reasonable in amount and the taxpayers given the benefit of the Federal amount which they are asking to be repealed.

Mr. Rainey. *There are some of us who think we*

can devise a method of doing that to meet your views.

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Governor Peay. We are pretty well toward the bottom. I have never feared this competition among the States. We have not suffered on account of Florida. We have had some people go there and some are coming back. But my investigation of the tax question and my observations have shown me that States cannot live without revenue, and if they leave off the inheritance tax, they will add some other tax. The more people who go to a State, the more revenue it will need; the governmental expenses are correspondingly increased. They cannot avoid the burden of government. A man who goes to Florida and escapes the inheritance tax sooner or later will be called upon to pay personal taxes and other forms of taxes. They have a high property tax in Florida. But we have never feared that question of competition in our State.

Mr. Rainey. Is not the present *program of building good roads*, which will be extended largely in the future, roads that cross parallels of latitude, enabling wealthy men with their automobiles to quickly, easily and delightfully reach the more pleasant places along the Gulf of Mexico—*does not that contribute to the present increase in the number of those who are establishing residences in Florida and southern Mississippi?*

Governor Peay. Yes, sir.

Mr. Rainey. Will not that condition develop more in the future as good roads are built? *Will not that movement increase*, and will not that add to the competition between States in attempting to attract wealthy men as time goes on?

Governor Peay. Undoubtedly so; I think so. That tendency is very evident along the Alabama coast and in our State.

Mr. Rainey. *Will that be any real menace which the Government should endeavor to correct for all States, if we can do it?*

Governor Peay. *Perhaps so, but I am sure you cannot do it.*"

Mr. THORESEN, Tax Commissioner of North Dakota (House Hearings 381 to 383). His testimony was in part as follows:

"Mr. Thoresen. Mr. Chairman and gentlemen of the Committee, I appear before you today as the personal representative of Gov. A. J. Sorlie, of North Dakota. * * * But he desires me to tell this Committee that he is for the abolition of the inheritance tax, if it is not necessary to produce revenue.

I have been rather amused in listening to the suggestions offered here in reference to Florida. We feel in North Dakota that if the Federal Government will leave us alone and let us work out our own problems, we will make the prairies of North Dakota so attractive that Florida will not even be a competitor of North Dakota.

The Chairman. The Federal Government has not been taking much from North Dakota?

Mr. Thoresen. No; and we appreciate that. At the present time the Federal inheritance tax is a minor matter, so far as the State is concerned.

Mr. Carew. They do not die very often in North Dakota?

Mr. Thoresen: They do not die very often there?

Mr. Carew. They die only once?

Mr. Thoresen. Just once. I think in that respect we can compete with Florida.

Mr. Rainey. Would you like to have what the Federal Government collects?

Mr. Thoresen. I have not the figures in regard to the Federal tax.

Mr. Rainey. Would not the citizens of North Dakota like to have it?

Mr. Thoresen. I think we would like to have everything we could get.

Mr. Rainey. You would utilize it fully, would you not?

Mr. Thoresen. I believe we would.

Mr. Rainey. *You would have no objection if we passed an act which would compel you to utilize it fully?*

Mr. Thoresen. No; we would make use of an inheritance tax."

Mr. DELANO, Chairman National Committee on Inheritance Taxation (House Hearings, pp. 389 to 397). Mr. Delano explained the report of that Committee recommending that the Federal estate tax with an eighty per cent credit provision be retained for a period of six years as a means of promoting uniformity of State inheritance tax laws.

Mr. F. W. DENIO, Vice President, Old Colony Trust Company, representing the American Bankers Association (House Hearings, pp. 424 to 434).

Mr. DENIO gave the Committee some further argument and demonstration that the eighty per cent credit proposal was unconstitutional. His testimony in part was as follows:

"Mr. Denio. In nine States of the Union there is in force a so-called community property law. While these laws vary somewhat, in general they provide that one-half of the property acquired after marriage belongs in equal shares to husband and wife. Suppose a man lives in a community-property State and leaves all his property to his wife, which is not an unreasonable provision for him to make. His Federal estate tax is figured on half the amount of the property which would be the base for his tax if he had died a resident of one of the other States. With a graduated tax, of course, his actual tax is much less than one-half as large. The result is the taxpayer is punished severely in the States which have no community-property law. It is a very serious question whether the other States can afford to

penalize their citizens by refraining from passing a community-property law which would remove the Federal menace.

I will draw my conclusion in a moment. With a \$500,000 estate it is cheaper by \$152,000 for a man to die in California today than in Florida—that is, if he owned property to the value of \$500,000, and if he has \$5,000,000 it is \$352,000 cheaper.

The Chairman. Have you figured out the credit in each case?

Mr. Denio. The credit in each case has been figured.

The Chairman. But, even so, if the further credit that is proposed should be allowed it would not figure out that way.

Mr. Denio. If an 80 per cent credit were figures, it would not. Naturally this has not been prepared to meet the views of the committee, which has been presented for the first time this morning.

Mr. Hadley. You are basing your figures—

Mr. Denio (Interposing). On the present law.

Mr. Hadley. You are basing your figures and conclusions upon the theory of a unit ownership?

Mr. Denio. Community property.

Mr. Hadley. Yes, unit ownership.

Mr. Denio. That is right.

Mr. Hadley. And not on the actual estate?

Mr. Denio. Not on the actual estate.

Mr. Hadley. I can see the distinction.

Mr. Denio. But if a man lives in Massachusetts today and wants to go and die somewhere where it is cheap to die, he is not going to Florida if he has a lot of money; he is going to California.

I am addressing my argument to California in particular. The argument that the Federal estate tax must be retained in order to prevent all the wealthy inhabitants of the United States from going to Florida to live, where there is no inheritance tax, does not impress us, because if we leave the tax as it is

we play into the hands of California, and that same restless and migratory population will go to California instead of Florida. In other words, the thing has got to be changed in some way or other. We would prefer to take our chances in allowing people to live and die where they want, regardless of either Federal, California or Florida inheritance taxes. *There is no logic in penalizing the rest of the country in order to force an inheritance tax into the laws of Florida, Alabama, Nevada, and the District of Columbia.*

The present law provides for a credit up to 25 per cent of the amount of the Federal taxes for inheritance taxes paid to the State domicile. *However worthy may be its purpose, this operates to coerce the States into enacting inheritance tax laws of a sufficient severity to make use of the credit.* There is nothing to prevent increasing the credit to 50 per cent or even to 100 per cent. *New York was obliged to increase its local inheritance tax in order to prevent its citizens from being penalized. The full effect of this 25 per cent credit is not reflected even in the reduced yields of last year, and the increase in the per centage can have no other effect but to reduce the yield of the Federal estate tax, so that its purpose becomes frankly one not of production of revenue for the needs of the Federal Government but a club to control State policies on matters of inheritance taxation.*

A number of States have enacted a form of income taxation to take the place of the general property tax on intangibles, thereby producing an increased revenue over the yield of the general property tax, which worked poorly on that class of property. *Why should not Congress grant a credit on Federal income tax re'turns for all or 25 per cent of the income tax paid by a taxpayer to his State. There seems to be as much justification for it as there is for any credit on the Federal tax for State inheritance taxes,*

The Chairman. *The principle is just the same.*

Mr. Denio. Exactly. It seems to us that the principle is precisely the same, and the only question there is, *Where are you going to draw the line?* * * * *We feel that they should not use it for the sake of forcing uniformity out of States that may have very good and sufficient reasons for having their own particular types of raising revenue and their own methods of arriving at a solution of their fiscal policies.*

We appreciate that there may be two sides to the question as to the desirability of having a *super-state*, if you like, and the States as political subdivisions thereof; but until the Constitution is amended to that effect we feel that the spirit of the Constitution should prevail, and that if the change is to be made it should be done by a frank decision on an issue clearly stated, rather than by this round-about and more indirect method. * * * The Supreme Court in the child labor case set forth the reasonable principle that Congress had no authority to accomplish by indirection, through the instrumentality of taxation, social reforms in the several States, power to do which was not directly conferred. In spite of plausible arguments we cannot help but feel that the real basic reason guiding many of those who, in spite of its relatively low yield and superfluous nature, urge the further retention of the Federal estate tax as a source of revenue—not those who *urge it as a club*; they are in a different group, but those who urge it as a source of revenue—is that it tends to bring about a redistribution of wealth in accordance with their views as to what constitutes national *social reform*. There is a responsibility which the States have not yet intentionally conferred on the Federal Government and which a Congress actuated by a keen desire to live up to the spirit of the Constitution will be slow to undertake until it has been explicitly conferred.

Mr. Collier. Let me ask Mr. Denio one question. The preparation and ultimate adoption of a uni-

form State inheritance tax is the fourth recommendation that you make?

Mr. Denio. That is right, sir.

Mr. Collier. Of course, you want that to be done by the States?

Mr. Denio. We believe that the States should do it.

Mr. Collier. And you expect to use the efforts of the association to accomplish that by State legislation, do you not?

Mr. Denio. *The country has been able to get uniform warehouse acts, uniform bills of lading, and all the other uniform acts. We believe that a voluntary method of doing it is more satisfactory than a coercive method.*

Mr. Collier. Than the method you have heard suggested here this morning?

Mr. Denio. Well, one might do it quicker than the other way, but I am not so sure that speed is the essential.

Mr. Collier. *Of course, we all want to see as nearly as possible a uniform estate tax in the States.*

Mr. Denio. We have no quarrel with the principle of inheritance taxation as such.

Mr. Collier. You are not opposed to an inheritance tax, then, in the States?

Mr. Denio. We do not argue against it in any sense as a source of State revenue. *We are directing attention to this as a revenue measure of the Federal Government.*

Mr. Collier. You are willing for the State of Massachusetts, or any other State, to have an inheritance tax?

Mr. Denio. *We are. We are also willing to say that if they do not want one, they need not have it; but if they do have it, we think it is desirable to have it uniform."*

After reading the foregoing testimony, there can be no mistake as to the purpose of the Committee in putting the eighty per cent credit provision into the program for

a continuation of the Federal estate tax, and subsequent attempts to camouflage that purpose were entirely futile.

After hearing the line of witnesses already indicated the Committee also heard several noted political economists of the country, among whom were Dr. THOMAS S. ADAMS, Professor of Political Economy, Yale University. (House Hearings, pp. 461 to 470.) His testimony in part was as follows:

"Mr. Treadway. You advocate its repeal in two years, when the States have come to a uniform method of imposing the tax, do you not?

Doctor Adams. I think that the Federal Government should wait and see. I think that you gentlemen will agree with me that if the State governments ever collect 10 or 12 per cent tax on inheritances of large size, and if they root out the double taxes, the demand for the repeal of the Federal tax will be irresistible. As I see it, the great evils at the present time are two—the excessive rates and the double taxation. Now, the double taxation originates with the States themselves. *Double taxation is an evil which the States alone can remedy.*

Mr. Garner. There will be plenty of time for Congress to act after the States have remedied those difficulties.

Doctor Adams. Yes.

The Chairman. *Right in that connection we could make that credit so that it would not include any tax that the State had levied on the intangible property of a non-resident.*

Doctor Adams. *If you could do that constitutionally, I think it would be a wise thing to do, but I have concluded in a general way that that would be of doubtful constitutionality.*

The Chairman. I think you misunderstood my proposition. *The purpose is to merely make more specific the items for which credit would be given, so that the State would not get any credit for any tax that had been levied on the intangible property of non-residents.*

Doctor Adams. If that is your view—and you gentlemen know more about this than I do—and your advisers believe it is sound from the constitutional standpoint, I would do that. It is probably better solution than the one I suggested.

The Chairman. *I think it is in line with it.*

Doctor Adams. It is, except that I was trying to avoid the constitutional question.

The Chairman. *Instead of making a general application of the credit of estate taxes up to a certain point, we would limit that credit by excluding those taxes that had been paid on intangible property in the State.*

Doctor Adams. My reaction to that is this: If, after investigation, you conclude that it is not attempting to put pressure on the States, and that it is sound constitutionally, that would appear to me to be a very good solution of the problem.

Doctor Adams. I want to call attention to two facts: Officers of trust companies tell me that almost universally at the present time, wills are being so drawn that the total taxes are paid from the residual estate and that in effect makes the inheritance tax an estate tax. Another party called my attention to this situation in *Pennsylvania*: *They have enacted an inheritance tax that includes, as I understand it, if my memory is correct, a provision to this effect, that in no case shall this tax be less than twenty-five per cent of the Federal tax. Now you see where you are going.*

Mr. Mills. Would not an estate tax in the States tend to eliminate that competition?

Doctor Adams. I think it would eliminate some of it.

Mr. Mills. If you limited it to the estate taxes and then limited it to the estate taxes paid to the State of residence, would not that eliminate the incentive to reach out for the property of non-residents?

Doctor Adams. I think it would.

The Chairman. I think you are correct, Mr. Mills. I can see the objection to my proposition.

Doctor Adams. I think you are right.

Mr. Mills. What do you say as to the constitutional difficulties—and I am not talking of constitutional difficulties in the sense of legal terms—but *what do you think of the constitutional difficulties in the way of the Federal Government offering rewards to the States to legislate in the way that the Congress of the United States thinks they should?*

Doctor Adams. I do not like it.

Mr. Mills. Is it tending to break down our Federal system of government?

Doctor Adams. I must agree with you. *I believe that the Federal Government should refrain from attempting to coerce the States.* On the other hand, I think that the States should refrain from attempting to coerce the people of the United States. I think that is what Florida and the District of Columbia are doing.

Mr. Mills. If you will just wait a minute, I will thresh this out with you. *Of course, we are all attracted by the theory of uniformity.* Was it not in the name of uniformity that we were asked to pass the child labor amendment, because three or four States, by maintaining low industrial standards, could handicap all the rest of the States? Is it not the argument that is always invoked when it is desired to put through some scheme of reform on a national scale?

Doctor Adams. I have got to say to you, whatever the consequences, that *I do not like the insertion in a revenue law of any provision designed to coerce the States to take any particular attitude in matters of this kind.* It so happens that the application of the present credit for inheritances and other death duties paid by the States is at points highly troublesome and very difficult. Under the situation here, I think I could bring it within my conscience to confine the Federal credit (after a period of two or three years) to State estate taxes. If pressed

further than that, I should have to say simply that I then prefer a Federal tax and a credit, without any limitations or qualifications, to repeal of the Federal tax.

Mr. Mills. Now, let me ask you this, and if you tell me that I am wrong I will accept Florida as the bugaboo, the way everyone else does: Do you think that many men, in order to escape a maximum tax of fifteen per cent, which is your rate, are going to Florida?

Doctor Adams. No, sir.

Mr. Mills. In other words, is not Florida the same old proposition that we face in all tax matters; if you impose reasonable rates, the people do not make any serious attempt to avoid them?

Doctor Adams. Wherever your question leads me, I answer yes, or the equivalent.

Mr. Mills. Have you ever known any one to leave New York and go to Florida to escape a three per cent income tax?

Doctor Adams. I have not. I have known and could name instances of people leaving Wisconsin.

Mr. Mills. To escape a six per cent tax?

Doctor Adams. Well, to escape the general tax environment. (Laughter)

Mr. Garner. Doctor, no longer ago than yesterday there was a report in the newspapers that one of the wealthiest men in Wisconsin, a man estimated to be worth \$35,000,000, had gone to Florida, and that the State officials of Wisconsin were now taking court action in order to recover their tax.

Doctor Adams. Well, just look at this situation: I knew Mr. Beggs. Mr. Beggs was interested actively in the street railway system of Milwaukee for years. He then went down to St. Louis and became interested actively in the street railway situation there, and then, in the latter part of his life, being old and infirm in health, he went to Florida, and because he was of an active mind and wanted to have a little business around all the time, he began developments in Florida. Now, then, he dies.

He appointed a Milwaukee trustee and a St. Louis trustee, and perhaps kept his securities in a St. Louis trust company. Where ought he to be taxed? As a matter of fact, he was split up among three States, in essence. And I do not want to be misunderstood about Wisconsin. I voice no criticism of the Wisconsin taxes. I simply happen to know that the income tax there of six per cent, plus the inheritance tax, plus the environment, has been sufficient to move people in my personal acquaintance-ship.

Mr. Mills. Would it not be entirely a question of environment, Doctor?

Doctor Adams. I state that fact for whatever it is worth. (Laughter)

Mr. Mills. But I want to ask you, as a tax man, do you think that many people will avail themselves of the opportunity offered by Florida to escape as reasonable an inheritance tax as fifteen per cent?

The Chairman. I think, if you investigate, Mr. Mills, you will find that some of them go from Illinois and take residence in Florida, for that purpose, and their highest rate is hardly half of that.

Mr. Mills. *Well, I would like to have Doctor Adams' opinion, because if that is so, I am going to accept Florida as a horrible example.*

Doctor Adams. You all know the question, 'When did you cease kicking your mother downstairs?' Any categorical answer is misleading. Now, I do not want to wriggle out of an answer to your question. I want to answer your question fairly. I honestly do not know about that fifteen per cent proposition for this reason: I know men who, liking the District of Columbia and spending a couple of months in the winter down here, would let a five or six per cent tax influence their decision as to where they should claim their legal residence. In the great mass of cases I should not expect a fifteen per cent inheritance tax to lead a rich man to transfer his domicile, we will say, from New York to Florida; but if he spends his winters in Florida, I would

expect a fifteen per cent inheritance tax to be a material consideration, provided they were not collecting the personal property tax too sedulously in the State of Florida. (Laughter)

It will be noted that while Doctor Adams was in favor of a continuation of Federal control of this form of tax, in order to bring about State uniformity of inheritance taxes, but he evaded a direct opinion upon whether the plan proposed by the Committee of allowing an eighty per cent credit would meet the test of the Federal constitution.

Dr. EDWIN R. A. SELIGMAN, of New York (House Hearings, pp. 477 to 496). His testimony was in part as follows:

Doctor Seligman. * * * *I need not dwell, gentlemen—you all know them better than I do—on the abuses of our State inheritance taxation. There is no uniformity. Some of the States are a little better than others, but we are all human beings and each of us is looking after our own interests. We do not always think of the other man.*

Some States, even like the much-to-be-admired State of Florida, go so far as to invite all of the rich men of the country to come down there and they say, 'We will not levy either an inheritance or an income tax.'

The result of the situation is that we have duplicate, triplicate and quadruplicate taxes. We all know of cases of estates of deceased people in the last few years that have had to pay two, three, four and five times over the same thing. Everyone agrees as to that.

The people in the States who advocate estate taxes are thoroughly alive to that fact and they say, 'Leave it to us in the States and we shall put our house in order.'

Very well; but are they doing so? Is it safe for us to rely upon promises, or ought we not to look for achievements?

I say frankly, if the States can all come together and agree upon a proper method of *interstate comity*, the argument for a retention of a Federal tax would be far less convincing than it is today, although there still would be strong arguments.

Even if the *States* were all to *behave themselves*, even if there were to be no *Florida* and no *Oregon amendment*—I am not sure whether it passed in *Oregon*; did it?

The Chairman. No.

Doctor Seligman. There was an amendment to be voted upon rendering an inheritance tax impossible hereafter in *Oregon*.

The Chairman. I do not think that has been submitted.

Mr. Hawley. I think it was in some other State.

Doctor Seligman. It was one of the western States which had been influenced by *Florida*.

Mr. Collier. I believe *Nevada*.

Doctor Seligman. *Nevada*, yes.

The Chairman. *Nevada* is correct, and the District of *Columbia*, of course.

Doctor Seligman. We come now to the last point, and with that I shall close this part of the argument. *Granted that all of the States behave themselves and there will be no more Floridas and Nevadas, what can you do to satisfy their real, legitimate fiscal needs?*

There you have the avenue of escape, which is the ingenious method devised by your Honorable Chairman. I think it sprang from his fertile brain as Minerva did from the head of Jove. I do not remember having seen it before. In other words, the Federal Government makes a remission or rebate to the States. I should go still further and say that

instead of giving twenty-five per cent, give fifty or seventy-five per cent, or as much as you think you can spare, without keeping the income tax too high. For every \$10,000,000 you keep of inheritance taxes, it will knock off a certain per cent of the income tax.

We are even now talking about *automobile taxes* and all these *nuisance taxes*. From a number of these nuisance taxes, we are not getting more than twenty or thirty million dollars. *I should much rather let them all go and keep, at least for the time being, the inheritance tax at a low rate.*

My point is that there is a method of giving to the States what is due them, of 'rendering to Caesar what is due Caesar,' and yet retaining the benefits of the Federal *activity*. That is, have the Federal Government collect the tax and turn back to the States whatever you think ought to be turned back.

The Chairman. *The result would be practical uniformity all over the country. My plan is to credit the Federal tax the tax paid to the State, emitting the credit to seventy-five or eighty per cent of the Federal tax. This would permit the States to use the tax, and also prevent double taxation.*

Dr. Seligman. * * * It is a query as to whether you are going to do it in that way, by giving them a credit, or whether you simply ought not to say outright, 'We, the Federal Government, are collecting this money. We are not going to give a credit, but we are going to turn back that money to you in a certain proportion.'

Mr. Carew. I understood the Chairman's scheme was to work it in the way I mentioned.

Doctor Seligman. Yes—well, you can work it that way, too. It could be worked that way.

The Chairman. That is not exactly my plan. *My plan would not be the ideal plan that you have. Your plan would be the ideal one, but I think you*

recognize that there would be great difficulty of working it out.

Doctor Seligman. Perhaps.

The Chairman. And also, I think, some would question the constitutionality of your plan. I do not know of any good lawyer that would question the constitutionality of the plan that I suggested.

Mr. Carew. Yours is an over-development of Mr. Green's plan.

Doctor Seligman. Exactly; *I go a step further, but I think we should all be delighted to get Judge Green's plan if we could not get the other.*

Mr. Chindblom. May I ask whether you would pay some of these taxes to such States as Florida, also?

Doctor Seligman. Under either plan the virtue of the project is that the man who lives in Florida can not escape an estate tax. The State may levy none, but, nevertheless, it would have to levy a tax if it wanted to get any money from the Federal Government.

Mr. Chindblom. You would have the Federal Government turn some money over to Florida that Florida, by her constitution, has said she does not want. That would result from your plan, not the Chairman's plan?

Doctor Seligman. No.

Mr. Mills. You won't mind my saying that I do not quite approve of applying the Dawes plan to the State of New York.

Doctor Seligman. I am thinking not only of New York but of North Dakota. *But whether you adopt Judge Green's plan or my plan, I suggest that you give no rebate or make no apportionment to any State unless it lives up to the principle of interstate comity. That is very important."*

From this testimony we ascertain the genesis of the twenty-five per cent credit provision in the Revenue Act of 1924, now increased to the eighty per cent credit provision in the Act of 1926, *i. e.*, the fertile brain of Chair-

man Green of the House Ways and Means Committee. He was given credit for that plan by Dr. Seligman, and he himself admitted its authorship, as shown by the colloquy above quoted. Not only so, but Chairman Green held onto that device for controlling State action with such bulldog tenacity that he and the other House conferees created a deadlock in conference, bluntly announcing that there would be no bill reducing revenue in 1926 unless the bill carried that provision. See discussion of the conference report in the Senate on February 24, 1926, Cong. Rec. page 4194. It is also plain from these hearings before the Ways and Means Committee that the estate tax provisions of the Bill, and of the Act of 1926, were predicated upon the idea of the Committee that the existing diversity in State inheritance, legacy, succession or estate tax laws constituted an economic evil, and that the eighty per cent credit provision was a proper means to be utilized by Congress to enforce a correction thereof. It is plain also that except for this purpose the Committee would have yielded to the widespread demand throughout the country for an absolute repeal of the Federal estate tax, and that the same was not retained in the bill for the purpose of raising revenue.

As to Florida, she had exercised her right as a sovereign State to make permanent by constitutional amendment a State policy of taxation, in force ever since she was admitted into the Union—no State inheritance tax and no State income tax. The hearings before the Ways and Means Committee showed that the Chairman and nearly all members of the Committee deemed such action by Florida a national sin. In 1900 Alabama adopted a similar constitutional amendment, yet her action in that behalf had passed by unnoticed for a quarter of a century. Nevertheless, Chairman Green was determined to stop the Florida boom. He and his Committee were determined that Florida as a *people*, as a *territory* and as a *government*, should be punished unless she came to her knees and that quickly. The eighty per cent credit provision

in the Federal estate tax was chosen as the weapon. This points to the proposition that Florida, as a sovereign State, has the right to seek redress at the hands of this Court. She cannot declare war against such acts of reprisal or against such invasion of her sovereign rights.

Kansas v. Colorado, 185 U. S. text 139 to 144.

If Florida is to remain "an indestructible State" of "an indestructible Union," relief in this Court is her only recourse.

The testimony of Governor Walker, of Mr. Denio and of Doctor Adams, shows that as a result of the twenty-five per cent credit contained in the Act of 1924, Georgia, New York and Pennsylvania each passed Acts providing for State inheritance taxes up to twenty-five per cent of the Federal estate tax; that such State tax acts were passed as a matter of self-defense—a form of duress. In 9 *Ruling Case Law*, subject "Duress," page 723, it is said:

"To constitute duress, it is sufficient if the will be constrained by the unlawful presentation of a *choice between comparative evils*; as inconvenience and loss by the detention of property, loss of property altogether, or compliance with unconseionable demand. * * * An attempt to compel an individual, a firm, or a corporation, to execute an agreement by threats to obstruct or interfere with the lawful business of such individual, firm or corporation, by means of boycotts or strikes, has been held to constitute duress."

Under the Act of 1926 the States of Georgia, New York and Pennsylvania will now be compelled under such duress to again increase their State inheritance tax up to eighty per cent of the Federal tax. Such is the freedom of choice which Chairman Green pretended was held out to the States—a choice to do what Congress deemed proper or permit their citizens to be penalized and revenues properly belonging to the State taken to Washington. Florida and Alabama, by constitutional provisions, have their hands

tied, so that the duress provided by the Act of 1926 goes to the point of attempting to compel a repeal of the Constitutions of those States if they would protect their citizens from the Congressional penalty, and retain revenues which the Federal Government admits that it does not need. It is not a voluntary proposition held out to the States; it is coercion; it is a plain, unconstitutional invasion of State sovereignty. The State of Florida, as such, is entitled to be heard in this Court.

E. THE PRESIDENT'S MESSAGE, HOUSE REPORT, HOUSE EXPLANATIONS OF THE BILL, AND ALSO AMENDMENTS OFFERED, ALL DEMONSTRATE THAT THE ESTATE TAX WAS DESIGNED FOR THE PURPOSE OF COERCING STATE ACTION, AND NOT TO RAISE REVENUE.

On December 8, 1925, the President delivered his message to Congress (Congressional Rec. 119, *et seq.*) in which, among other things, he said:

"The functions which the Congress are to discharge are not those of local government but of National Government. The greatest solicitude should be exercised to prevent any encroachment upon the rights of the States or their various political subdivisions. Local self-government is one of our most precious possessions. It is the greatest contributing factor to the stability, strength, liberty, and progress of the Nation. It ought not to be infringed by assault or undermined by purchase. It ought not to abdicate its power through weakness or resign its authority through favor. It does not at all follow that because abuses exist it is the concern of the Federal Government to attempt their reform.

Society is in much more danger from encumbering the National Government beyond its wisdom to comprehend, or its ability to administer, than from leaving the local communities to bear their own burdens and remedy their own evils. Our local habit and

custom is so strong, our variety of race and creed is so great, the Federal authority is so tenuous, that the area within which it can function successfully is very limited. *The wiser policy is to leave the localities, so far as we can, possessed of their own sources of revenue and charged with their own obligations.*

* * *

"The Government has no justification in taking private property, except for a public purpose. It is always necessary to keep these principles in mind in the laying of taxes and in the making of appropriations. No right exists to levy a dollar, or to order the expenditure of a dollar, of the money of the people, except for a necessary public purpose duly authorized by the Constitution. The power over the purse is the power over liberty."

These pronouncements were perfectly sound constitutional principles. Neither Calhoun nor Jefferson ever stated the essentials of the State rights with greater clearness. But in the same message (Cong. Rec., p. 121) the President further said:

"The bill will correct substantially the economic defects injected into the revenue act of 1924, as well as many which have remained as war time legacies. In its present form it should provide sufficient revenue for the Government.

The excessive surtaxes have been reduced, estate tax rates are restored to more reasonable figures, with every prospect of withdrawing from the field *when the States have had the opportunity to correct abuses in their own inheritance tax laws.*"

From this language it is seen that the President had been converted to the program of the Ways and Means Committee, or rather of the National Taxation Committee, headed by Mr. Delano, of retaining the Federal estate tax for the time being as a means of promoting uniform State legislation on the subject of inheritance taxes. As a re-

sult of these inconsistent passages in the President's message, he was quoted in the debates on this bill by those who approved and by those who disapproved of the estate tax as provided for in the bill.

In House Report #1 of the 69th Congress upon this bill, page 14, we find the following in explanation of the bill:

"In order to give the several States full freedom to make use of this tax the Committee decided to extend the credit which might be so allowed up to 80 per cent of the Federal tax. The several States by the use of this provision will be enabled to make use of inheritance taxes without additional cost to its citizens."

Remembering the course of the hearings before the Ways and Means Committee, it is apparent that this explanation was an effort to camouflage the real purpose of the eighty per cent credit provision.

When the House began a consideration of the bill in Committee of the Whole, Chairman Green in the same patronizing tone (Cong. Rec. p. 130) further undertook to explain the bill in part as follows:

"With this provision with reference to credits it is hoped that the various States, so far as their needs occur, will make use of the inheritance tax. Certainly they are given full opportunity to do so, and in the meantime permit me to also indulge in the hope that the several States—I say *several* States; perhaps I ought not to use that word as if it included a large number, and I should say those States—which levy a tax on the intangible property of a nonresident will cease that practice. The result of this unjust practice is sure to provoke retaliation, and again the States will be thrown into an economic and taxation war, if I may use that expression. We can proceed under the provisions of this bill, and in the meantime, if, as the President has said, a fairly *uniform system* of taxation is adopted

by the several States, we may possibly in time be able to dispense with the Federal inheritance tax entirely."

But as a consideration of the bill proceeded, the other members of the Ways and Means Committee were less guarded in their explanations of the estate tax provision of the bill. On December 9, 1925 (Cong. Rec. 182), Mr. Mills of New York (Committee member) said:

"It seems to me that it is undeniable that the horrible example of Florida has been used as a very strong and persuasive argument for a Federal estate tax.

I believe the Federal Government should get out of the field of death duties, but I think for the present we should be satisfied, having reduced the Federal rate to a reasonable point, and having taken care of the revenue needs of the States by the 80 per cent rebate clause.

Mr. Green of Florida. Just one question.

Mr. Mills. Just let me finish this and then I will yield. Then, after this campaign of education, after the States themselves put their own house in order, do away with this business of double taxes, impose an inheritance tax at a reasonable rate on people and property that legitimately belong to them and do not go after citizens of other States, then I think no matter how horrible an example the State of Florida may present no one will contend the Federal Government should not get out of the field of death taxes."

On the same date Mr. HULL, of Tennessee (Committee member), Cong. Rec. Appendix, p. 557, said:

"The first great task of the States is to establish some degree of uniformity in order to eliminate the vicious double and triplicate taxes and many complications in the administration. * * * If experience thus far has demonstrated anything, however, it is that the States should have the further cooperation

of the Federal Government in the establishment of uniform State legislation and administration practice."

On December 11, 1925 (Cong. Rec. p. 299) Mr. TREADWAY, of Massachusetts (Committee member) said:

"Were it not for *some glaring irregularities* in the laws of a few States, *Notably Florida*, I am certain the entire Federal estate tax would have been voted out of this bill by the Ways and Means Committee."

On the same date (Cong. Rec. 301) Chairman GREEN, in further explanation of the eighty per cent credit, said:

"My colleague (Mr. Ramseyer), who made such an interesting and informing speech, wanted to know why we put the figure at 80 per cent. The situation as it appeared before the committee was simply this: The committee came to a conclusion that the States needed the revenue to a large extent, and under the situation that prevailed with reference to Florida and some other States the States would not be able to use the tax effectively unless the Federal Government remained in control."

And on the same date (Cong. Rec. 311) the following colloquy occurred between Mr. MURPHY of Ohio, and Chairman GREEN of Iowa as to the operation and effect of the eighty per cent provision:

"Mr. Murphy. Is it the purpose of this law to force the various States to adopt the inheritance tax? In my State we have a 4 per cent maximum. Are you by this law going to force my State to go to the extent of 20 per cent? Is that the purpose?"

Mr. Green of Iowa. No, the State of Ohio can do just as it chooses about it.

Mr. Murphy. Does it not seem to be the purpose of the provision to force the States throughout the Union to adopt the inheritance tax? It looks as though it is to force it on the people of the States. That is why I am asking the question.

Mr. Green of Iowa. No, it will not force the States. They can do as they see fit.

Mr. Murphy. Either that or do without their portion of what the Federal Government taxes the estates of the people who live in my State of Ohio.

Mr. Green of Iowa. Certainly.

Mr. Murphy. Is that it?

Mr. Green of Iowa. Certainly; but if we did not give any credit, they would get nothing at all.

Mr. Murphy. If my State then comes up to the level of 20 per cent, then the Federal Government does not take any. Is that the idea?

Mr. Green of Iowa. The citizens of the gentleman's State, in any event will not get credit for more than 80 per cent.

Mr. Murphy. In other words, it has been the boast of the Federal Government that we have been finding a way to lower the tax burden of the people, that Congress has gone several million dollars below the recommendations of the President, and yet our party that is lowering the taxes is now pointing to the 48 States and saying, 'You have got an income and an inheritance tax law, and bring it up to the level of 20 per cent; otherwise you lose your share of the 80 per cent.' Am I right?

Mr. Green of Iowa. In one sense, yes; in another, no. It does not cost your citizens one cent, and it will greatly reduce the total of the inheritance taxes paid.

Mr. Murphy. But it costs my State if we do not pass a law like this, does it not?

Mr. Green of Iowa. Oh, no; it does not cost your State anything. We have greatly lowered the rates of the estate taxes, and we offer your State an opportunity to use these taxes without imposing any additional tax upon its citizens. This is a tax that ought to be uniform all over the country to avoid the great evil of States bidding against each other for the residence of the wealthy.

Mr. Murphy. If my State does not do it, the tax-

payer loses the difference between what is now charged and what the gentleman is suggesting?

Mr. Green of Iowa. We offer your State a reduction, and if your State does not choose to take the benefit of the reduction whose fault is it? This provision of the law will in time probably reduce the receipts of the National Government from estate taxes about \$50,000,000."

On December 12, 1925 (Cong. Rec. pp. 319, 325, 330, 331, 332, 334 and 336) other additional explanations were given of the bill. It was charged by Mr. DEAL of Virginia, and by Mr. DENNISON of Illinois, that the eighty per cent credit provision was inserted in the bill to coerce State action, and that the Federal Government had no constitutional right to do so; while, on the other hand, Mr. LOZIER of Missouri, and Mr. GILBERT of Kentucky, supported the program of the Committee.

But the explanations and debate on the estate tax did not reach their climax in the House until December 16, 1925. At page 543, Cong. Rec. the estate tax, Title III, of the bill, was taken up for consideration. At page 544, Cong. Rec. Mr. RAINEY of Illinois, offered an amendment to increase the graduated rates above those provided for by the bill, and on the same page Mr. RAMSEYER of Iowa, offered a substitute, also increasing the graduated rates above those provided for in the bill. The Rainey amendment and the Ramseyer substitute were both rejected by the House, and thereby the House unequivocally put itself on record as not retaining the estate tax for the purpose of raising revenue.

At page 558 Cong. Rec. Mr. Rainey of Illinois, offered another amendment, the purpose of which was to make the credit on inheritance taxes paid to the States conditioned upon whether or not such State refrained from undertaking to impose its tax upon intangible properties of non-residents. In other words, the purpose of that amendment went a step further than the proposed eighty per cent pro-

vision, *i. e.*, to also control and enforce State comity in the matter of levying inheritance taxes. Chairman Green opposed that amendment on the ground that it was unconstitutional, saying that the collection of the estate tax would then depend upon State legislation, overlooking, however, that the collection of the tax under his plan of eighty per cent credit also depends upon State action.

States Under the Lash.

Speaking of the Rainey amendment, Mr. Mills of New York (Cong. Rec. p. 559), said:

"I do not expect to see the amendment adopted to-day and I do not know that it is desirable it should be adopted, but I do think it extremely desirable *that the State legislatures should know that we have something in reserve*; that the American people, speaking through the National Congress, are beginning to take notice of the scandalous situation which exists in this field; and that the Congress of the United States has in the amendment presented by the gentleman from Illinois (Mr. Rainey) *a weapon which it will not hesitate to use unless the States immediately proceed to put their own house in order.*

I want to say to you gentlemen that some State legislatures apparently have seen fit to instruct their Members of Congress as to what their proper attitude should be on Federal estate taxes. I say to you gentlemen that you can render no greater service in this field of taxation *than to go home and tell your State legislatures that they must act promptly, with a view of establishing in the United States uniform, decent, and reasonably high estate systems of inheritance taxes in order to save this tax from growing into further disrepute, and if they do not, then they may expect the Federal Government to step into the field and to use some such weapon as the gentleman from Illinois suggests in order to compel the States to do what they should be willing to do voluntarily.*" (Applause)

If the framers of the Federal Constitution had ever dreamed that such doctrine as this would be applauded in the United States Congress, there would have been no Constitution and no union of States. The Rainey amendment was rejected.

“Whom the gods would destroy they first make mad.”

At page 560, Cong. Rec. Mr. GREEN of Florida, offered as a further substitute for the Rainey amendment an amendment providing that Title III, the estate tax, be stricken from the bill altogether. This amendment, offered by Mr. Green of Florida, was the waiving of a red flag at the bull. Mr. Green of Florida then rose in support of his amendment, and said in part as follows (Cong. Rec., Appendix, pp. 822 and 823):

“As the bill stands without this amendment it would compel my sovereign State, the great State of Florida, to return to the Federal Treasury 80 per cent more estate tax than any other sovereign State. According to the returns on estate taxation filed from January 1, 1924, to December 31, 1924, 9,338 estates were subject to tax and paid taxes, said taxes amounting to \$65,900,050. It is true that my State paid less than one-fourth of one of these millions; it is true that New York State paid more than \$20,000,000; Pennsylvania more than \$5,000,000; New Jersey more than \$5,000,000; Massachusetts almost \$5,000,000. These last four States enumerated paid more than half of the total amount returned to the Federal Treasury. Assuming that the amount of estate tax paid to the several States was equal to the amount paid by them to the Federal Treasury through the Federal estate tax, then if this bill should carry the provision which it now has and 80 per cent of these estates were credited back to the States, then you can readily see that less than \$7,000,000 would be sent from these States to the Federal Treasury, whereas Florida would still be sending her 100 per cent to Washington.

I am sure that smaller States which have jumped on the band wagon with these great States, almost empires within themselves, are not aware of the far reach of these vicious provisions in the bill. For instance, taking the State of New York, now paying more than \$20,000,000, reduce that 80 per cent and she will pay approximately 16,000,000 less; Assuming, however, that her returns in the State will be the same as 1924 returns. Then the \$4,000,000 is the amount she will send to the Federal Treasury. No wonder how she and the other three States mentioned, together with a few of the band-wagon States are making this terrific fight to get the 80 per cent credit for their States. Under your new arrangement New York, with approximately one hundred times the wealth of the State of Florida, ten times the population of the State of Florida, will pay only eight or nine times the amount of the Federal estate tax paid by the State of Florida. These other great States will pay in proportion, of course.

The result, then, will be that in the future instead of the Federal Government collecting nearly \$66,000,000 through the estate-tax medium she will collect only about \$13,000,000. Then do you mean to tell me that the State of Florida and her constitution should be bartered and bought for the paltry sum of \$13,000,000? If you do scrap the constitution of the State of Florida, sooner or later these same vastly wealthy States will be found scrapping the constitution of every State which has lesser power and lesser financial bearing than they have. Louisiana and other States which have their tobacco tax, the various small States which have their gasoline tax, and the various other State taxes which now repay our State treasuries will soon be confiscated, their constitutions scrapped, and them doing homage to the great financial interest of the powerful and strong States. The precedent that you are undertaking to establish to-day is so far-reaching that our

Republic will face a chaotic condition, and so long as the powerful States wreak their revenge and vent their spleen upon the weaker States, taking from them their rights and constitutions, our Nation is destined to crumble. I cannot believe that by your action here to-day that you are going to contribute to any such tyrannical legislation."

Florida the Target.

Mr. Green was followed by Mr. Sears of Florida, who said in part as follows (Cong. Rec., pp. 658 and 659):

"Mr. Chairman and my colleagues, I appreciate what my good friend and colleague Mr. Rainey of Illinois stated, namely, he admits it would be absolutely impossible to amend this bill in any particular. Alas and alack, his statement, I fear, is only too true.

This paragraph refunding 80 per cent of the inheritance tax so clearly shows on the face of same that it is a penalty or punishment and not intended for tax purposes necessary for governmental purposes that it seems to my mind no argument is necessary. *It is so apparent, my colleagues, throughout this entire debate that the sole purpose and the only purpose, of the paragraph is an effort to strike at the State of Florida and force them by national legislation to amend her constitution.*

My colleague from Louisiana in his remarks just a few moments ago so stated in direct terms; and if the court should take judicial notice of the intent of Congress when this question is passed upon, if the same should be brought before them for final decision—and I assure you such will be the case—they will only have to read the hearing and the speeches made on the inheritance part of the bill in order to reach the conclusion that I am correct. I state it is an effort to hit at Florida.

Mr. Green of Iowa. Will the gentleman yield?

Mr. Sears of Florida. I yield to the gentleman.

Mr. Green of Iowa. *The purpose of this amendment is to obtain, if possible, a reasonable, uniform*

system of inheritance taxes throughout the United States.

Mr. Sears of Florida. Oh, certainly. Your purpose is so apparent that I am not surprised you should attempt to conceal it. Why, my good friend, the gentleman from Massachusetts (Mr. Treadway)—and I hold him in the highest esteem, and he is a member of the committee that prepared this bill—in his argument showed clearly that was the purpose, as did my friend, the gentlemen from Iowa (Mr. Green).

Let me read you what Mr. Treadway, in his remarks which appeared in the Congressional Record of Friday, December 11, said:

‘Were it not for some glaring irregularities in the laws of a few States, notably Florida, I am certain the entire Federal estate tax would have been voted out of this bill by the Ways and Means Committee.’

Let me ask you why the States of *Alabama* and *Maryland* and the District of Columbia, which have no inheritance tax, are not mentioned?

No; you did not have your minds on Florida. You can state that as many times as you please, but you will have a hard time in convincing the people of the country and the courts that such was not the case.”

Mr. Sears then quoted the decisions of this Court in the Child Labor cases, where the Court, among other things, said:

“The so-called taxing act must be naturally and reasonably adapted to the collection of the tax, and not solely to the achievement of some other purpose plainly within State power.”

Continuing, Mr. Sears further said:

“You did not mention Florida in the bill, but every one of you who spoke on this bill unhesitat-

ingly stated it was an effort to strike at Florida. You say in this paragraph to Florida, You pay an inheritance tax of twenty per cent, and all that you pay shall go to the Federal Treasury and be used for governmental purposes. Therefore, taking it for granted—in a broad stretch of imagination—if same is equally distributed among the States, Florida would only get back one forty-eighth of the amount paid to the Government, while your State, the great State of Ohio, the State of Presidents, under the law perhaps would get back eighty per cent of the amount the Government collects. You tell me that is not discrimination! I reply, What is discrimination?

Let us be fair and honest with ourselves in arguing this question. Why longer try to conceal the purpose? You and I know that you are simply trying to make Florida change her constitution. Considering the economical administration of the laws of our State and our State government, we have no State bonded indebtedness and do not have to collect an inheritance tax to meet our expenses. Let the other States investigate the way we run Florida, and instead of trying to force us to change our constitution and cut down their expenses, give the people some relief of tax burden, but do not come to the Government with a club and pass a law trying to force a State to do that which is solely the right and privilege of the State to do.

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Where are you going to stop? Take the prohibition amendment and the Volstead law. Under this bill you are collecting a tax on alcohol and beverages. Under this precedent you are about to establish, say, inasmuch as the great State of New York will not enforce the national law or make any effort to do so, say we will penalize you; we will give back eighty per cent of the taxes to all States that do make an honest effort to enforce the law. Why can not we say on tobacco, where, in the State of

Georgia, they put 1½ per cent tax on cigarettes, we do not like your law and we are going to make Georgia change the law. What would the Representatives in this great body from the great State of New York and that wonderful State of Georgia say if you should undertake to attempt any such thing? I believe you would oppose such a proposition to the utmost of your ability, and you would find me fighting side by side with you."

Following Mr. Sears, Mr. Cox, of Georgia, arose (Cong. Rec., p. 560) and pointed out that the eighty per cent credit provision violated the uniformity required by the Constitution, because while the estate tax provisions provided for a uniform levy, they did not provide for a uniform collection. Continuing, he further said:

"Certain enlightened gentlemen advocating the passage of the bill upon the floor have admitted that it was not for the purpose of *raising revenue*, that the General Government could well afford to get along *without the tax*; that the almost unanimous sentiment of the country demand the retirement of the Federal Government from this field of taxation, and that it is its purpose to retire, but not until, through the operation of the act under this provision of the bill, all the States have been forced to *adopt a uniform inheritance tax law*. This admission damns the provision beyond the point of forgiveness. Certainly the Government can not justify the levy of a tax that it *does not need*. Neither can Congress defend its adoption of a law the admitted purpose of which is to coerce the States into the adoption of a general measure which meets the views of the Congress. It is not within the power of Congress to inter-meddle with the domestic affairs of States. It is not within its power to legislate for a State. Neither is it within the power of States, acting through Congress, to legislate for other States. Ours is a divided sovereignty, the General Government being sovereign only as to those objects dele-

gated to it and the States sovereign as to those objects delegated to them. Neither is sovereign over matters delegated to each other. When the Congress, through the passage of this bill, undertakes to shape legislation to be adopted by States, it convicts itself of an unwarranted and unconstitutional usurpation of powers which the people have delegated to their respective States. Such a measure is not within the constitutional discretion of the legislative powers of the General Government, and statements made on the floor of this House by scholarly and enlightened gentlemen who have rendered valiant services to the country that this Government expects to continue to occupy the field of estate taxes until the States shall have adopted a uniform law is the boldest declaration of an intention on the part of Congress to bring to bear the power of the Federal Government upon the States that I have yet heard made. It is a declaration in favor of the breaking down of the lines that divide the several States and compounding the whole American people into one common mass, which would, of course, mean that our Government would ultimately fail. To pass this bill with this credit provision to estates would be a wicked thing for this Congress to do, and the members of the majority party who believe in State rights ought not to permit it to be put upon the country, and certainly members of the minority party should, to the limit of their ability, resist its being done."

These speeches by Mr. Green of Florida, Mr. Sears of Florida, and Mr. Cox of Georgia, brought Chairman Green to his feet to further explain and defend his bill, and at pp. 561 and 562 Cong. Rec. he said, in part:

"Mr. Chairman, we are now considering a portion of the bill, which I regard as a great constructive measure. * * *

The change in our inheritance tax laws as presented by this bill has largely been brought about

as a result of the movement which *originated nearly two years ago*. The main purpose and object of this movement was to obtain for the States the opportunity to use the inheritance tax in some substantial form for the purpose of increasing the revenues of the several States and thereby enabling the States to decrease the property tax, which is essentially a capital tax, now so heavily oppressing the farmer and other owners of real estate everywhere. For the purpose of carrying out this reform, for a great reform was really contemplated, they proposed to entirely repeal the Federal inheritance tax. While I am unalterably opposed to the repeal of the Federal inheritance tax at this time, I want to say that this movement was perfectly legitimate, even granting that *in all of its methods it was not entirely sound*. Those who were back of this proposition in its origin were thinking men. They had studied the tax situation most carefully, although, as I think, from a somewhat narrow standpoint. They saw that no one paid so large a proportion of his income as the farmer often did, that nowhere was anyone so heavily taxed, even though his business might show nothing but a loss as a farmer; and that, instead of his taxes being in the process of being lessened, they were continually being increased and likely to be increased further unless something was done. They wanted the States to use the inheritance tax, the States that have been blindly using this oppressive property tax, when a fair tax and a just tax might be substituted for it. In this respect, I repeat, they contemplated a great reform which ought to sweep the country and would have swept the country had it not been for a most unfortunate and, as I think, very *discreditable* movement that sprang up in the *wake* of this constructive program.

As I have said, this movement began nearly two years ago, entirely legitimate, exceedingly creditable in its general purpose and object, but unfortunately

there are a large number of people in this country and every other country, who can look at taxation only from the standpoint of promoting their own *selfish* personal ends for the time being, and when it comes to the future of this great country, they are like the Bourbon kings and nobility that brought on the French revolution. They say, 'After us the deluge. Let it come.' These people saw, as they thought, in this movement an opportunity to get rid of all the inheritance taxes whatsoever and in this they were prompted by the example of the *State of Florida* which had already offered a premium for the rich to take up their residence within their borders and was advertising far and wide, long and loud, how they might escape taxation by taking up a nominal residence within that State, while their business and the sources of their income were entirely without.

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Lest I be misunderstood at this point, because it seems to me that some gentlemen have not fully understood the purpose and object of the bill, let me explain a little more fully how the farmer and the house owner may be benefited by its provisions. We collected last year about a hundred millions through the Federal inheritance tax, notwithstanding the fact that under the Act of 1924, where any State inheritance tax had been paid it was credited on the Federal tax up to twenty-five per cent thereof. Some States promptly availed themselves of this provision, which cost their citizens nothing. Others, with that strange *apathy* which sometimes prevails in State legislatures, did nothing, and I am sorry to say that my own State came within this class. But let me say to gentlemen like the gentleman from Nebraska (Mr. Simmons) and the gentleman from Ohio (Mr. Murphy), for both of whom I have not only the highest respect but also an affectionate regard, that they seem to me to be missing the mark.

I do not know what will be done in States that have little or no inheritance. I hope that they will reform their taxation system, but I feel quite sure that in Nebraska, whether my friend whom I have just mentioned joins in the movement or not, that the farmers of his State will insist on taking advantage of the credit up to eighty per cent, as provided in this bill, which may be given for State inheritance taxes paid, and that the legislature will take the money which they can get in this way and thereby be able to reduce the taxes which now bear so heavily upon the great farming population of that State. The plan is perfectly simple and very easy."

Continuing, Chairman GREEN further said:

"Mr. Hill of Maryland. Will the gentleman yield?

Mr. Green of Iowa. I regret I have not the time.

Mr. Hill of Maryland. For a question on the theory of the tax?

Mr. Green of Iowa. Well, make it short.

Mr. Hill of Maryland. In the case of States which have no inheritance tax at all the tendency of this regulation will be to require them to ask for them, will it not?

Mr. Green of Iowa. *If they use good judgment and are not living in the dark ages of taxation, if they have not forgotten all the principles applying to this great subject, they will probably change the laws and give to their citizens an inheritance tax.* I regret I cannot yield further.

I understand perfectly well that there are some who object, not to the principle of giving a credit for estate taxes, but to the figure of eighty per cent without gradations placed in the bill, and my colleague (Mr. Ramseyer), who in general debate made such a forceful speech, indeed I might say one of the great speeches of the debate in support of the inheritance tax, thinks that the percentage of credit ought to be rated in accordance with the kind of the

estate, and also that the credit of eighty per cent is too large. Possibly he is right, for this is one of the things as to which there can be no certainty and as to which the figure taken is to a certain extent arbitrary, but it always will be arbitrary and always will be a matter of theory and of indefinite determination. We took the figure of eighty per cent just as we have the general plan of estate taxes as expressed in the bill, not merely after committee meetings, but merely after hearings, but after it had been considered for more than six months by a commission of tax experts, after it had been discussed and rediscussed, argued and reargued, considered and reconsidered, and we think we have it about as near correct as it can be made. My colleague thinks that it is too high and gives too much credit to the several States. I must admit that he can find many instances in which his statement would be correct. I hope he will be able to see that I could find numerous instances as to which his plan would not apply correctly, and in particular, taking the bill as a whole, the greater part of the revenues under it are not produced by the great fortunes, particularly since we have so lowered the maximum tax. The small estates which, as a rule, have been accumulated within the borders of a particular State of which the owner was a resident will make up by far the greater part of the receipts. On the whole, I think the figure of eighty per cent, until we have made a trial of it, must be taken as the most likely to be correct.

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Florida Must Obey or be Punished.

Now I have reached a point where my views and many of those who are perfectly ready to support the provisions of the bill somewhat diverge, although so far as the adoption of the bill is concerned, we are united. *Some gentlemen say that they are willing to support the bill as matters now stand but that they expect and desire that the estate tax should,*

in the course of a few years, be abolished. I want to look further before I come to any such conclusion, although I am not prepared to say that if the States should unite on a fairly uniform system of inheritance taxes, I might not be willing to accept the abrogation of the Federal inheritance tax. Just now I want more information as to what these States are willing to do. I understand that Florida is still unwilling to see the light, and I turn to consideration of conditions in that State more with sorrow than with anger, more with pity than with contempt."

These declarations by Chairman Green show that he dominated the Ways and Means Committee and the House as well, on this subject, and proposed to set himself up as a schoolmaster to discipline the States which had no inheritance tax laws, and particularly to punish Florida for her indiscretion in making permanent a policy of taxation in existence ever since she became a State. But Chairman Green was not satisfied with such injury and he must needs add insult thereto. Whereupon he also said (Cong. Rec., 562) :

"Mr. Green of Florida. Will the gentleman yield?

Mr. Green of Iowa. In a moment I will yield to my friend from Florida.

Let me say to the people of Florida and to its representatives in this House, that you never can make a really great State through colonies of *tax dodgers or money grabbers; parasites and coupon cutters, jazz trippers and booze hunters.* (Applause) Your delightful climate and your natural resources are a sufficient attraction if you do not offset them by filling up your community with members of that ancient and dishonorable order of tax dodgers, who, of all citizens, are the most narrow, the most selfish and the most unpatriotic. *I congratulate those States whose patriotic citizens have not yielded to the alluring but improper inducements offered by the State of Florida.* (Applause)"

After Chairman Green had thus been forced to uncover the real purposes of the estate tax provisions of the bill, it was then perfectly clear to everyone that the estate tax was retained, not to raise revenue, but to discipline and coerce the States in the matter of inheritance taxes. Mr. HILL of Maryland (Cong. Rec., 563) very clearly stated what was thus so obvious as follows:

“Mr. Chairman and gentlemen of the House, the present legislation in this bill is framed on antagonism to a Federal inheritance tax. In other words, the committee says the Federal inheritance tax is a bad tax and should be abolished; we are ultimately going to abolish it, but in order to coerce certain States to do what we think they should do, namely, to come out of the dark ages of the past and adopt our theory of taxation, we put in this eighty per cent theory.”

It was a matter of course that the amendment offered by Mr. Green of Florida was rejected.

Revenue Refused, Weapon Retained.

On December 17, 1925 (Cong. Rec., p. 631), Mr. Sears of Florida replied to the unwarranted attack by Chairman Green in a somewhat humorous vein. The press of the country came to the defense of Florida in a more serious tone, as, for instance, the “Mobile Register,” quoted in the speech of Senator Fletcher, Cong. Rec., Jan. 5, 1926, p. 1115.

On December 16, 1925 (Cong. Rec., p. 563), Mr. Burtness of North Dakota offered an amendment to sub-section B of section 301 of the bill, providing that the figures “50” be inserted in lieu of the figures “80.” He then spoke in support of his amendment (Cong. Rec., p. 567) pointing out that such decrease in the credit would give to the estate tax some semblance of producing revenue, and also hold out to the States the same incentive to enact uniform inheritance tax laws which was being advocated by the Committee. But the House very promptly rejected his amendment and thereby again put itself on

record that its object in retaining the estate tax was not to produce revenue.

Mr. Green of Florida then offered another amendment (Cong. Rec., p. 563) providing that in States having constitutional amendments against an inheritance tax, that the credit should be fifty per cent, and no more. That amendment was promptly rejected, and at page 564, Cong. Rec., Mr. Green of Florida, offered a further amendment that the figures "45" be inserted in lieu of the figures "80." This amendment was similar to the amendment offered by Mr. Burtness and was promptly rejected.

The action of the House in rejecting these several amendments plainly demonstrated that in retaining the estate tax it was intended boldly to use the power of Congress to levy and collect excise taxes for the purpose of invading the right of the States, under to the 10th amendment to the constitution, to adopt such policies of State taxation as they might deem suited to their respective conditions. The decisions of this Court in the *Child Labor* cases, in the *Future Trading Act* cases, and in the *Narcotic* cases, plainly show that such attempted exercise of power is wholly unwarranted and contrary to the Constitution.

In the brief by Mr. Lee, heretofore referred to, spread upon the record of the House February 23, 1926, he reached the conclusion, considering only the face of the bill, that the dominating purpose of the estate tax provision was to raise revenue, and that the non-fiscal purposes evidenced thereby were merely incidental. But if we give any consideration whatever to the explanations of the bill above referred to, and if we give any weight to the action of the House in rejecting the amendments above referred to, then it is impossible to reach any other conclusion than that the dominant and only purpose of retaining the estate tax in the bill was to discipline and coerce State action.

In the case of

Western Union Tel. Co. v. Foster, 247 U. S.
114, 62 L. Ed. 1016,

this Court said:

“A constitutional power cannot be used by way of condition to attain an unconstitutional result.”

It is plain from the matters so far referred to that the result sought to be attained by the provisions in the House Bill on the subject of the estate tax was an unconstitutional result, wholly outside the province or power of Congress.

It being already apparent that the sentiment in the House almost unanimously supported the program of Chairman Green, only one result was to be expected, *i. e.*, that the bill as proposed by the Ways and Means Committee, would be overwhelmingly passed. At page 732, Cong. Rec., December 18, 1925, the bill passed the House, yeas 390, nays 25, not voting 12.

F. SENATE HEARINGS, SENATE REPORT, AND SENATE DISCUSSION OF THE HOUSE PROPOSAL, FURTHER DEMONSTRATED THAT THE ESTATE TAX PROVISIONS WOULD NOT PRODUCE ANY REVENUE, AND WERE AN UNCONSTITUTIONAL INVASION OF STATE SOVEREIGNTY.

When the Senate Finance Committee met, as appears by Senate Report #52, Part I, 69th Cong., it was deluged with petitions, letters, telegrams and other communications from every source—all urging that the estate tax carried in the House Bill be defeated. Part 2 of the hearings before the Senate Finance Committee embraced, among other things, a statement by Honorable Edgar Brown, Speaker of the House of Representatives of South Carolina, who appeared on behalf of an organization of speakers from many States. Mr. Brown's statement was spread upon the record (Cong. Rec., Feb. 10, 1926, pp. 3378 and 3379), and he said in part:

"No one will gainsay the statement that a 4 per cent inheritance tax collected by the Federal Government, with the expense of maintaining a department for that purpose, appraising estates, carrying on litigation, etc., will make that department more than self-sustaining.

I am informed that the cost of collecting inheritance taxes by the Government is from $1\frac{1}{2}$ per cent to 3 per cent. If this be true, does the Government want to levy a 1 per cent or a $1\frac{1}{2}$ per cent inheritance tax?

It is, therefore, conclusive that the effect is one not to raise revenue for the Federal Government but to force upon the States a rate and system of taxation that may be obnoxious to them.

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As a matter of national policy, this 80 per cent credit is objectionable because it makes the Federal Government a revenue collector for the States, leaving the Federal Government in some cases an exceedingly narrow margin of revenue, if indeed it would not in some instances entail an actual loss upon the National Treasury. For what purpose is this 4 per cent levy to be laid by the Government? If its purpose is to tempt, urge or coerce the States into the enactment of death tax laws in harmony with the views of Congress thus expressed, it is a wholly unjustifiable act on the part of Congress. If, on the other hand, it is to be taken as an admission that it is believed that the Federal Treasury needs the revenue that might be secured from a 4 per cent levy on estates, then the law should be amended in accordance with that view and the Federal levy reduced to a 4 per cent maximum.

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I know of cases where in order to collect a hundred or two dollars in Federal inheritance tax the Government has spent hundreds and hundreds of dollars in appraisements, reappraisements, and liti-

gation and caused those interested untold expense and worry. Annoying rulings are constantly being promulgated by the lesser officials."

The figures given by Mr. Brown are indisputable, and show that in actual operation the estate tax collected under the provisions of this Act will barely pay the expenses of collection.

While the bill was pending before the Senate Committee Senator Fletcher of Florida made a speech in the Senate, January 5, 1926 (Cong. Rec., pp. 1109 to 1128) demonstrating that the purpose and operation of the House proposal was unconstitutional. He pointed out the lack of geographical uniformity in its operation; that to promote uniformity of State laws was not a power given to Congress; that the eighty per cent credit provision was an undisguised club to coerce the States into passing inheritance tax laws contrary to the rights reserved to the States by the 10th Amendment. That the purpose and effect of the eighty per cent proposal would be the imposition of a penalty upon all States and their people who did not conform to the Congressional mandate. Page 1112, he further said:

"It means coercion and is indefensible. That the States, other than Florida and Alabama and Nevada, should attempt to force upon the people of those States a local, domestic tax which they in the exercise of sovereign rights have determined they do not approve and will not have is a most astounding proposition. Florida has the right to refuse to impose any inheritance or income taxes on her citizens. No other States, not all the remainder, can compel her to do otherwise, and they ought not to attempt it. To use the assumed power of the Federal Government to that end is unjust, oppressive, and I do not believe will be sanctioned by Congress.

The remission of part of the Federal tax where there is a similar State tax to the extent of such

State tax, and no further, and not exceeding 25 per cent of the Federal tax—in the act of 1924—was primarily an innovation. It had no precedent in Federal legislation, and I unhesitatingly say that the precedent itself is indefensible. This bill is an abuse of a vicious precedent. It proposes to increase the credit to 80 per cent of the Federal tax.

The obvious and essential effect is directly forcing by the Federal Congress upon the States and each State of a policy of collecting revenue by and for the State, and further tends to fix the practical limits of such collection by and for the State.

Essentially it is an interference with State policies, those fundamental policies without which one State cannot be distinguished from another, without which a State can have no individuality, no autonomy, thus by mere brute force breaking down what little is left to sovereign States, which in the beginning assumed that the protective reservations, expressed and implied, in the Federal Constitution would permit them to retain their individuality at least. This interference is, in my opinion, an unconstitutional infringement in and of itself. In addition, it is unfair and unequal in its bearings upon the different States, seeing that, for a time at least, the States, respectively, cannot so modify State legislation and possibly State constitutional provisions so as to come within this largess by the Federal Congress or stay without its penalty. Two or three States prefer not to have any tax of this nature. Whether that policy be good, bad, or indifferent should be left wholly to the State. The theory is that the State should change its methods of collecting such revenue as it may need, or should collect more revenue whether it needs it or not, merely because by doing so the State may obtain a gift from the Federal Government.

As, of course, I am not presuming to question here the views of anyone who sees fit to conclude that

Florida should obtain part of its revenue essential for carrying on its functions from inheritance taxes, my position is that the Federal Congress has no power or privilege under the Federal Constitution to dictate, directly or indirectly, that Florida should obtain its revenue in whole or in part from this source; and that should the Federal Congress, for no reason other than the one of raising Federal revenue, dictate such a policy to Florida or to any State or States, it is entering upon a new line of breaking down State autonomy that is contrary to those fundamentals called 'State rights,' which should be held sacred.

* * * *

The proponents of the present measure admit that it is no longer necessary for the Congress to tax inheritances in order to obtain needed revenue, and this is apparent in the reductions made in the rates of the income tax. It is still further emphasized by the provision allowing eighty per cent of the tax to be credited where that amount is paid to the State in death taxes. The occasion for continuing this burden upon inheritances is said to be a desire to thereby promote a uniform system of taxation among the several States.

Thus Congress is to establish a system of tutelage by means of this law, and the States are to be instructed how to regulate the exercise of the transfer privilege. Having, under the spur of necessity, invaded a field of taxation which belongs peculiarly to the States, it is proposed to hold onto it after the necessity has ceased in order that the Congress may constrain the States in the exercise of a privilege which they only have the right to confer.

If the Federal Government can collect what it chooses in the way of duty or excise from estates, it may impose a tax of eighty per cent without any exemptions on an entire estate. What would be left for the States? If it can collect twenty per cent and allow a credit of eighty per cent of that, why

can it not collect 100 per cent and allow no credit? Or why can it not collect eighty per cent of the net estate and allow a credit of the entire amount?

To say this is unreasonable, I answer, the Government started with a tax of much less, but increased it to a maximum of forty per cent in 1924, and now changes again and proposes a maximum of twenty per cent. It set a precedent of allowing twenty-five per cent of its tax as a credit and now proposes to make the credit eighty per cent, showing the constantly changing attitude of the Congress and a remarkable example of the uniformity it seeks to promote.

It is pointed out that several of the States have no inheritance tax laws, and it is argued that it would be a fine thing to induce them to adopt measures of this kind.

Apparently no weight is given by these gentlemen to the idea that each State should be allowed to regulate its own internal policy without constraint and to adopt such laws as its own peculiar circumstances render desirable. For example, the State of Florida has no debt and possesses credit balance in its treasury of \$7,000,000. To be more exact, the situation is this:

The State of Florida actually owes nothing and has in its treasury nearly \$7,000,000 in cash."

Page 1113 he further said:

"This paragraph b of section 301 is admittedly aimed at Florida, and it is drawn in such form as to require Florida citizens to pay larger inheritance taxes to the United States than the citizens of those States which impose inheritance taxes.

• • •

It has been repeatedly stated on the floor of Congress that its purpose is as I have stated.

Congress would be establishing a dangerous precedent in using its legislative power to coerce a particular State to change the policy of its laws. And each member of Congress should recollect that he is also a citizen of a particular State and that the precedent established and now proposed to be emphasized and enlarged in this bill may at some time be used against his own State."

Page 1118 he further said:

"The purpose is to force Florida—omitting reference to other States—into line with a policy Congress devises with respect to her own domestic affairs. The effort is to oblige Florida to shape her sovereign rights with respect to her tax laws to conform with the plans and views of certain members of Congress. *The method of making effective this coercion is through the taxing power of the Federal Government, and this estate tax provision is designed to accomplish that end. This, in fact, is the sole basis and reason for the estate tax provision.*

It infringes on the implied powers reserved to the States.

It is in direct conflict with and repugnant to those State rights and powers."

Page 1123 he said:

"In Florida the two great disturbers—death and taxes—lose in large part their terrors.

Let others refrain from envy or criticism because she is able to put off the specter of death by her climate and push back the specter of taxes by constitutional amendment."

Page 1124 he said:

"Congress may do its worst, but that growth and development will go on.

Fair and proper encouragement is deserved and that 'would promote the general welfare.'

Congress might at least refrain from a deliberate attempt to obstruct that progress which arouses the admiration of the world."

Page 1127 he said:

"If the object is to break up large estates, the Federal Government, abandoning the purpose to raise revenue, should use an inheritance tax instead of an estate tax. Such a policy, moreover, can be better carried out by the use of the income tax. Evidently it is not for the purpose of raising revenue and it is not for the purpose of breaking up large estates that this estate tax is continued in this bill.

It is fair, then, to say the purpose is, I repeat, to oblige the States to come into line with the Government's idea of a proper inheritance tax law, which shall at least approach uniformity among all the States.

The question raises itself, *What authority is found in the Constitution, express or implied, for the Federal Government to enact a tax law for any such purpose?*

There is none. *When the necessity for raising revenue ceases, the power to resort to taxation to accomplish some other end or to enforce some kind of policy pleasing to Congress is wanting; in fact, never existed and the statute is invalid.*

But the provision in this bill has even a narrower purpose in reality. It is aimed at Florida and Alabama, and possibly Nevada, where no inheritance taxes are imposed whatever, and the purpose is to compel them to join the other States in laying such taxes.

Particularly does Florida offend the sensibilities of those who insist upon imposing upon their citizens inheritance taxes, because Florida has adopted a constitutional amendment providing that 'no tax

upon inheritances or upon the income of residents or citizens of this State shall be levied by the State of Florida or under its authority.'

Florida has said in most solemn form that she does not wish to levy such taxes, she does not need to do so, she will not do so, and there is no power anywhere that can compel her to do so.

It is well known that the tendency of legislation today, with the States, is plainly toward relying more and more upon the revenue from death taxes; to increase the rates; to reach out after all property that it is possible for them to assess; to change their laws and rulings, always seeking additional revenue. Do you wish Florida to join in this orgie and harmonize with it and, further, indulge in what a distinguished authority on the subject characterized as 'death-tax brigandage'? *This is a great reform, indeed, to which you invite, then seek to drive us.*

Florida declines to engage in this mad scramble for revenue involving to a large extent duplication of taxes and other injustice.

Yes; there is need of uniformity.

But Florida prefers to lower rather than increase taxes on her people, and she feels she can make her best contribution to uniformity by refusing to enact any laws imposing inheritance taxes and permitting the States responsible for the variations and confusions to have a free hand to make their own adjustments."

Page 1128 he said:

"Who gains by the provision that a credit up to eighty per cent of the Federal estate tax be allowed for estate, inheritance, succession or legacy taxes, paid to a State?

This means, in many instances, a net yield of twenty per cent only to the Federal Government.

Will that yield be sufficient to cover the maintenance of the machinery of the Government required for its collection and the administration of the division handling such taxes, to say nothing of the inconvenience of the country, involving numerous proceedings, waste and expense, sometimes exhausting the estate?

Surely, we must recognize that the States, individuals, and descendents of the dead all have rights.

What warrant or justification can there be for deliberately taking a portion of the property left by a decedent with no net gain to the Federal Government or to the States?

It is simply proposed to disregard the rights of individuals and of States and penalize all those not willing to pay inheritance taxes.

All the agencies of administration and collection are to be employed, the rates are reduced, the credit mentioned is to be allowed, and a net decrease of revenue must necessarily follow, with the chances that the whole performance will result in a net loss to the Government.

The States will not benefit because no more of the revenue goes to them. The only effect on them will be to induce them to increase their taxes on their own people. No benefit accrues to the administrator or executor by such a provision. An extra amount of trouble and expense will be occasioned, to be charged against the estate, thus obliging any estate to contribute through Federal compulsion, to a futile attempt to coerce other States.

This all means to a certainty economic waste of no small proportions."

It seems to us that the arguments of Senator Fletcher are sound and unanswerable. They undoubtedly had their effect on the Senate Committee, for in Senate Report #52, Part 1, 69th Cong. pp. 7 and 8, they said:

“ESTATE TAX.

The committee recommends the repeal of this tax. The House bill provides for a possible eighty per cent credit for taxes paid to any State or States in place of the twenty-five per cent credit provided under existing law. The eighty per cent provision, in effect, constitutes *an admission* that but twenty per cent of the revenue proposed to be raised by this measure is, in fact, required by the Government. The application of the eighty per cent provision, together with the cost to the Government of collecting the remaining twenty per cent, does not justify the retention of this tax.

The committee is mindful of the statement made by the then chairman of this committee (Mr. Simmons) when reporting the 1917 bill to the Senate:

‘Such a tax, when used as an emergency measure, is necessarily unequal in operation. * * *

If levied as a war tax, that is, as a temporary emergency measure, it falls only upon the estates of those who happen to die during the period of the emergency. * * * On the other hand, as a permanent measure, such a tax, even at the rates already fixed by existing law, trenches in considerable degree on a sphere which should be reserved to the States.’

The committee agrees with the statement of its then chairman, made in 1917. This is peculiarly a form of taxation which should be within the province of the several States to such extent as they, upon their own *volition* and *choice*, *desire* to exercise it.”

On January 28, 1926, the Senate began its consideration of the bill as amended and reported by the Senate Finance Committee.

At page 2525, Cong. Rec., Chairman Smoot, explaining the Senate Report, said:

"The adoption of the provision for an eighty per cent credit must be predicated upon the assumption that the Federal Government does not require the full amount of revenue which would be received on the basis of the rates provided for. If the eighty per cent credit provision were applied to a \$100,000 estate the Federal Government would receive only \$100 and the actual benefit to the Federal Government would be smaller, since the cost of collection would be just as great as if the full 100 per cent were collected. Furthermore, the cost of collection will be increased through the necessity of checking up the amount of similar taxes paid to the different States and to be applied under the credit provision. *So far as a revenue measure is concerned, we would seem to be unjustified in continuing the estate tax as a Federal law.*

But the eighty per cent provision has another effect which is objectionable. *The apparent purpose of the eighty per cent provision is to utilize the Federal Government as a means of compelling the States to form their taxation measures for their own needs along such lines of uniformity as the majority in Congress may consider proper. It is that spirit of coercion to which I particularly object. Any State has a perfect right to determine as it sees fit the extent to which it will tax the estates of its decedent residents or the individual heirs who may be recipients of property by reason of death."*

The Committee amendment striking the House provisions as to the estate tax came up for discussion in the Senate February 9th and 10th, 1926, beginning page 3286. Senator Fletcher led the attack on the House provisions, reinforcing his argument of January 5th with quotations from decisions of this Court in the Child Labor cases, the Future Trading Act cases, the Narcotic cases, and Liquor cases. He was supported by the argument of many able Senators, and little can be added to what they said, showing the unconstitutionality of the House proposal.

At page 3288 Senator Fletcher of Florida, said:

"And I doubt very much if it is desirable that we should have such uniformity, because, as I have just stated, the needs of one State are different from the needs of another State. No State ought to impose taxes on its people merely for the purpose of taxing them; no State ought to levy more taxes than it needs for governmental purposes; and the needs of one State are altogether different from the needs of another State. Consequently, I do not see how it would ever be possible to have uniform legislation throughout the country; and that is the purpose of the legislation pending here, as has been brought out in the discussion in another body, in the press and elsewhere. The whole purpose is not to raise revenue, but to promote uniformity of legislation among the States on the subject of inheritances."

At page 3289 Senator SIMMONS, of North Carolina, and Senator FLETCHER, of Florida, said:

"Mr. Simmons. I agree with the Senator. The development of highways in the State of North Carolina has contributed very largely to the immense movement that is going on in western North Carolina to-day, almost eclipsing the movement in Florida.

North Carolina, however, Mr. President—and that is the point I want to make—imposes a very considerable income tax and a very considerable inheritance tax. In fact, the State of North Carolina does not impose for State purposes any tax upon property at all, but it raises all the revenue which is necessary for the support of the State government by inheritance, income, and license taxes; and yet in the western part of my State there is going on to-day a movement within a limited territory, probably within a radius of 50 or 75 miles, which is as great as is going on in the State of Florida.

Mr. Fletcher. I think the Senator is quite correct about that. My contention is that is a matter for North Carolina to determine for herself—how she shall raise her revenue and what she will do with her money—and that there is no power in Congress to dictate to North Carolina what her taxation laws shall be. *If we once concede that there is any such authority in Congress there is no limit to which that power may go, so that, under the guise of taxation, the Federal Government may undertake to prescribe what the States shall enact in the way of tax laws."*

On the same page Senator CARAWAY, of Arkansas, said:

"If the Federal Government can force uniformity with reference to taxation, it can do so with reference to marriage and with reference to divorce. It could abolish the separate school system in my State and compel all our children, however repugnant it might be, to attend the same school; and with all due respect to the late Senator from Massachusetts, he would not have needed his 'Force bill' at all if this scheme had been called upon, because the Federal Government could say that, unless supervision of elections were permitted by Federal supervisors, the States should not participate in a certain tax. So there would be no end to the coercion that could be brought to bear upon a State if this unthinkable provision should be adopted by the Senate."

On page 3290 Senator FLETCHER, of Florida, further said:

"The uniformity clause was intended to prevent sectionalism in the exercise of the taxing power.

Here we have the worst type of sectionalism, a sectionalism aimed at a sovereign State and a tax law designedly framed to operate differently within the bounds of three States of the Union from the way in which it would operate in the other forty-five.

As a result of the provisions of paragraph b, section 301 of the proposed revenue bill, as soon as

the Commissioner of Revenue crosses the State line from Georgia into Florida he must collect an estate tax materially larger than the law permits him to collect in Georgia.

Is it not perfectly clear that the principle of uniformity is violated by these provisions when we think of an internal revenue collector standing on the line between Georgia and Florida, for instance, and over in Florida collecting, we will say, \$1,000 estate tax, and over in Georgia collecting \$750? Just step across the line and you get this difference, or maybe more. The Georgia law now, I think provides for this 25 per cent deduction as provided for in the Act of 1924; and therefore the same collector steps over the line in Florida and collects \$1,000, and over in Georgia collects \$750 in full settlement of the tax.

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“The operation of the law in each State is made to depend upon the policy of that State’s taxing laws. The policy of a State is coextensive with its territory, so in the last analysis the classification attempted by the pending measure is a territorial or geographical one.

The Congress should take notice of this lack of uniformity and avoid it. Congress should do what the courts will be compelled to do should the estate tax be enacted as now proposed.”

At page 3293 Senator SIMMONS, of North Carolina, said:

“*Camouflage the situation as anyone will*, I think it is generally understood—certainly it is very clear to me—that the purpose of retaining the inheritance tax is not to *raise revenue to meet the necessary expenses of the Government*, but it is for the purpose of enforcing uniform legislation on the part of the States with reference to inheritance taxes.

The Senator probably knows that the governors of thirty-odd States appeared before the Ways and

Means Committee of the House, urging that the Federal Government retire from this field of taxation and leave it entirely to the States. That proposition and that insistence on the part of the governors of the several States was met by the Ways and Means Committee of the House with the proposition that they would so adjust the provisions of the bill as to give four-fifths of the entire receipts derived from the Federal inheritance tax to the States in order to induce them to conform their laws to this requirement of the United States Government, to bring about uniformity in the State laws. That was the purpose. My understanding is that the Government *will realize net but very little revenue from the tax, and that this tax is not being advocated for the purpose of revenue but for the ulterior purpose of enforcing uniformity in taxation of inheritances by the States.*"

At page 3296 Senator CARAWAY, of Arkansas, said:

"Mr. President, I shall occupy the time of the Senate for only a minute.

I am opposed to any provision in a tax bill that undertakes to levy a tax within the State and return it to that State conditioned upon the State surrendering some right, which the bill, as it came from the House, did. It undertook to coerce the State into levying an inheritance tax or estate tax, in order that it might receive back from the Government 80 per cent of the amount of the inheritance tax paid in that State, which the Federal Government sought first to collect and to transmit to the State.

"If that principle shall be recognized, the independence of the State is destroyed. First, you may compel it to levy taxes when, as in the case of Florida, it does not need the revenue. After you had exploited that field you could control any other activity in the State. I called attention a while ago to the case of the late Senator Lodge, of Massachusetts.

Had he fallen upon this instead of the idea of a force bill he would have had a very much more effective weapon in his hands. *It would be perfectly easy to compel the State to surrender its control over any of its internal affairs or else crush it by taxation.* The proposal is so vicious that it is nonunderstandable to me than any one should approve it. Under the exercise of a similar power the Federal Government could make *California come to its knees and surrender its right to exclude Japanese from owning lands within the State.* It could make my State, as I said a minute ago, surrender its right to maintain separate schools for white and black children. It could destroy the independence of the States in any respect and in every respect, and therefore I cannot understand how anybody should have supported the proposal.

It is just as vicious under the amendment offered by the Senator from Utah, to return to the State 25 per cent, as it is under the provisions of the bill as it came from the House, to return to the State 80 per cent. It is the principle against which I protest; and I do not believe that any Senator, after he thinks of it, will be willing to enter upon that dangerous field of coercing the State by threatening to *burden it with taxes* if it does not adopt a certain policy that the Federal Government may approve."

At page 3298 Senator BRUCE, of Maryland, said:

"The time has arrived when the Federal Government is thrusting its hand into the very *bosom of State* authority, asserting sovereignty in one degree or another even over such subjects as *infancy, maternity, labor, education, health, construction of State highways*, and what not, things that no one in the earlier stages of our national history ever imagined for a moment that the Federal Government would attempt to intermeddle with. In, recent years through the agency of what has come to be generally known as 50-50 legislation, the National Govern-

ment has contrived a means of filching from the States a large and a most precious part of their rights of local self-government.

All of us know how seductively, how insidiously the Federal appropriations, which are made from year to year for the construction of State highways in the Union, operate. After the Civil War there was for some time danger of State sovereignty being raped. That day has passed. Now the process by which the Federal Government, year after year, intrudes more and more upon the province of State rights is a process of indirection, a process of stealth, a process of *spoliation in the guise of helpful beneficence*.

In the pending bill we have one of the most striking of all recent illustrations of that process. *A sovereign State of the Union, the State of Florida, which has never had an estate or an inheritance tax, or an income tax, has seen fit, in the exercise of its own ideas of State policy, to adopt constitutional provisions prohibiting State estate or inheritance taxation, or State income taxation. Did she not have the right to do that if she saw fit to do it? If her condition was so fortunate that she could dispense with estate or inheritance or income taxation, is that any reason why the Federal Government should endeavor, in the cunning manner evidenced by the House provisions of the pending bill, to deprive her of her autonomy?*

The House proposition is nothing less than an astutely devised expedient for fitting every State in the Union to one standard procrustean bed of taxation. The idea of that proposition is to make estate or inheritance taxation so alluring to the States that they will all adopt the same system of such taxation for the purpose of obtaining the credit of 80 per cent upon their Federal estate tax bills provided by the House. As the Senator from Arkansas

(Mr. Caraway) has argued with such unanswerable force, the Federal Government might just as well attempt, in the same oblique manner, to control any other matter of State policy, to compel a State to knuckle under to its will in any respect whatever. In that manner the Federal Government might exercise dominion over education in the States, the tenure of property in the States; in fine over any and every matter of State concern, however intimate or vital. No power would be left to the States worth a pin's fee if such a practice on the part of the Federal Government were to be recognized and given force."

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"I think—I may be wrong about that, now—but I think that for upwards of 50 years at least the policy of our State has been to impose inheritance taxation only on estates passing to collaterals. I cannot conceive of anything of the sort that would be more obnoxious to the sentiments, feelings, and convictions of our people than coercive legislation by the Federal Government which made them feel more or less as if they were compelled to alter their own ideas of State policy in order to obtain a benefit which they would gladly reject if let alone. We get right back to the crux of the thing when such a question is asked as the Senator from Wisconsin has asked of me. I reply to his question, as we are only too apt to do, by asking another: *Why should not the State be allowed unseduced, unmolested, unafraid, to pursue its own ideas of State policy?*"

Senator LENROOT agreed with the House proposal. Apparently having in mind the suit in Wisconsin as to the Beggs estate, described in the testimony of Doctor Adams, House Hearings, p. 466, Senator LENROOT, of Wisconsin, announced his position (Cong. Rec., p. 3300) as follows:

"Just as sure as night follows day, if we repeal the Federal tax and it is attempted in North Carolina to increase the estate tax, it will fail, because

Alabama and Florida have no inheritance tax. The result will be, if we repeal the Federal estate tax now, that one by one the States will repeal their State inheritance taxes and this great amount of unearned wealth will go scot free from any sort of an estate or inheritance taxation."

Senator SIMMONS, of North Carolina, then replied at some length. At pages 3303, 3304 and 3305, Senator Simmons, among other things, said:

"Mr. President, the bill proposes to give the States 80 per cent of this tax. That is a confession that the Government does not need that part of the tax; is it not? It retains only 20 per cent of the amount, if the States see fit to take advantage of it—20 per cent. The maximum rate is 20 per cent. The part which the Government retains is 4 per cent. The actuaries of the Treasury will tell you that it costs the Government about 2 per cent to collect that tax. That cuts it down to 2 per cent. Two per cent of the amount involved is \$10,000,000; so that if this bill works as it is predicated it will work, and as it is intended it shall work, all the revenue that the Government proposes to get out of it is \$10,000,000."

* * *

The Senator from Wisconsin says that although the Government will get only \$10,000,000 out of this levy for the purpose of coercing the States of this Union to levy an inheritance tax as high as eighty per cent of the rate as the Federal Government levies we ought to agree to this provision of the bill. What right has this Government, under the Constitution, under the decisions of the Supreme Court, under the general policies that obtain here, to levy any tax upon the people of the United States except to raise *revenue to defray the expenses* of the Federal Government? What provision of law authorizes the United States Government to levy a tax for the benefit of the States? Where does the Federal

Government get its authority, not only to levy taxes which the people of the States shall pay into their own treasuries, but also to go into the States with an army of Government officials and collect the taxes? What provision of law makes the Federal Government a tax collector for the States of this Union?

Have we come to the point where we have no respect for the rights of the States? Have we come to the point where the Federal Government shall assume to decide what inheritance taxes the States shall impose? When did the great State which I in part represent abrogate its rights to determine what taxes it should impose upon its citizenship for its own expenses and purposes?

It is said the Federal Government is justified in doing this because one State of this Union having exceptional advantages in certain directions, advantages which no other State in the Union possesses, had a little boom just after it repealed its inheritance tax. It is said that this fact constitutes a reason why the Federal Government should tread under foot the rights of the States and assume the office of going into the States and determining not only their taxes but also undertaking to collect their taxes. That is the excuse given for it, the *only excuse* and the *only warrant* for it. I say it is a high-handed procedure.

Suppose you succeed in perpetrating this outrage upon the sovereignty of the great States of the Union? Are you going to stop? They might survive this blow. But is it the last blow you are to deliver? Suppose you determine that you will apply the same principle to the income taxes. Many of the States are now operating mainly upon inheritance and income taxes. Suppose you decide to apply that principle to the income taxes and pass a law here giving the States a part of your heavy levy. You increase your levy on income taxes, increase it to such a point as to give the States half

of it, or two-thirds of it, or three-fourths of it, or four-fifths of it, the proportion provided in this bill. You say to the States, 'Now, you raise your income taxes up to that point. It is a good thing to have uniformity of income taxes in this country,' just as it is said now it is a good thing to have uniformity in inheritance taxes. Some States, like Florida, do not levy them at all. Some States, like Georgia, levy a very trifling tax. Some States, like Virginia, levy inconsequential taxes. New York levies \$17,000,000 of taxes on inheritances; the great State of Pennsylvania, I think, something over twenty million in inheritance taxes. Things are unequal. It is said, 'The public welfare requires that this thing should be made uniform, and, therefore, we will resort to this same scheme with reference to income taxes.' And it is applied.

They do not stop there. We have recently developed a magnificent system of interstate highways, stretching from Maine to Florida, from San Francisco to Washington City. These have become the main arteries of highway travel. They are filled with automobiles going to and fro all during the year, and at certain seasons of the year there is great congestion. As the automobiles pass from one State to another, the owners have to pay a different rate of gasoline tax. Some States have a high tax, some have a low tax, some have no tax at all. Gasoline is a subject that the Federal Government might constitutionally resort to for income. *Let us assume it levies, therefore, a high tax upon gasoline and provides that the State shall have a half of that or two-thirds of it, with a view of forcing all the States of the Union to equalize to uniformity their levies upon gasoline.*

So you might go on down the line. *What will be the result? The result will be that every State in this Union will be seething with Federal officials levying and collecting taxes from the citizens of the States for State benefit. The result will be that*

the power and right of the States to impose taxes according to their judgment and according to the conditions which exist in their respective jurisdictions, will be wiped out, and the will of the Federal Government with reference to State-imposed taxes shall be substituted for the will of the States.

Is there a more insidious way of attacking State sovereignty and State political autonomy than that? Is there a more insidious way that the mind and ingenuity of man can invent of centralizing all power in the Federal Government here at Washington?

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A few States may get frightened because they see a great influx of people to Florida and think it is due to the repeal of the State constitutional provision against inheritance and income taxes, but it will only be a day's dream. The idea is already being exploded. The idea will soon be totally exploded and abandoned. Does the Senator mean to tell the Senate that the 34 governors who came here to appear before the Ways and Means Committee in behalf of the repeal of this tax, fully aware, as they were, that their States had imposed heavy inheritance taxes during the war when the Federal Government was also heavily taxing, that they came here for the purpose of getting this tax removed so they might escape the State inheritance tax in their States and put themselves upon a footing with Florida? Does he mean to say that to an intelligent Senate and expect such a statement to be credited?

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From time immemorial, the States had been getting their income from property taxes, and they continued for a while, but suddenly they awakened to this means as a proper source. When the war came, that spirit was quickened and they went on increasing the taxes as the necessity increased. Now, the Federal Government is about to abandon this system of taxation. In effect, the Federal Government

comes in and says in practical effect, 'We will surrender all of this tax except \$10,000,000 to the States.' *The Federal Government says, 'We no longer need it. The emergency which called it forth has passed. The war is over. We have ample revenue from less legally doubtful sources of Federal levy to conduct the Government. We are annually confronted with surpluses. We do not need those millions of inheritance taxes. The States need them, and we are ready practically to turn them over to the States, reserving to ourselves only enough to pay the legitimate expenses of collection.'* "

It will be remembered that Senator Simmons was Chairman of the Senate Finance Committee back in 1916 and 1917, and ever since then has been a ranking member of that Committee. He has, therefore, devoted years of study to questions of Federal taxation, and his conceptions and arguments of the proper scope of a Federal taxing act are undoubtedly entitled to great weight.

On February 10, 1926, Senator La Follette of Wisconsin supported his colleague, Senator Lenroot. He was followed by Senator TRAMMELL, of Florida. Senator Trammell (Cong. Rec., pp. 3370 and 3371) said:

"The *history of the situation* is that we had never imposed an inheritance tax in the State of Florida. Neither had my State adopted the policy of the imposition of an income tax. Surveying the situation as to avenues through which the State could obtain revenue for its support, Florida has elected to maintain her State government by the imposition of an ad valorem tax upon realty and by the imposition of certain license and occupational taxes, and more recently, since the automobile has become so generally used, necessitating a large consumption of gasoline, the State has imposed a gasoline tax, which brings in a large revenue.

* * *

I contend that the provision for a refund of eighty per cent of the estate tax is reprehensible and indefensible and should be stricken from the bill. *If it is the desire of Congress to reduce inheritance taxes eighty per cent, or if it is the desire to reduce them fifty per cent or sixty per cent, why not, in justice, write into the bill the schedule that is desired and specify the amount of inheritance taxes to be paid instead of trying, by this provision for a refund of eighty per cent, to coerce the States into requiring a State inheritance tax?*

Senator Trammell also pointed out that the conditions in Florida had never created any need for an inheritance tax or an income tax, and that such forms of tax were unsuited to Florida conditions. The case of

Binns v. United States, 194 U. S. 486,

illustrates that Congress itself devised a license tax only to defray the expense of local government in Alaska, whereas an ad valorem property tax is used in the District of Columbia. Why should not Congress set its own house in order before attempting to exercise a censorship over the States?

At page 3375 Senator REED, of Pennsylvania, said:

“We are taxing Florida five times as heavily on the inheritances of her citizens as we are taxing Pennsylvania, perhaps. What possible justification can we find for such a course of action as that?”

I think the Senator from Iowa is exactly right. If there is any justification for this tax, we ought to keep it all.

Now let me come to the next point, and I am not unmindful of my promise to try to be brief. The only justification for levying a tax in this bill is that it brings in money to the United States to help pay its governmental burdens. We are all mindful of the great burden of \$20,000,000,000 of the Federal

debt, to which frequent reference has been made. *The only excuse for levying a tax is that it will bring us in more money than it costs to raise it.*

Here is what this does: If this bill is successful in clubbing the States into adopting a uniform tax policy, we are going to return eighty per cent of this twenty per cent maximum to the taxpayer.

We are only going to get four per cent net from the largest estates. We talk like rabid radicals, and yet we impose one of the smallest inheritance taxes by this rate that is known in the United States—four per cent on the richest men. The average estate will not pay anything like that; it will not pay as much as one per cent. An estate of \$100,000 will pay net to the United States one-tenth of one per cent, after we have made the eighty per cent rebate. The tax is nominally \$500, but we rebate \$400 of that to the State. After all its effort to collect, after all its audits and appraisals of the estate of the taxpayer, the United States gets a gross income, then, of \$100; and the cost of collection, as we all know, will run many times that amount. *Looked on as a money raiser, it is hopelessly unproductive; and if we are proposing to enact this bill, as its title says, 'to provide revenue,' we are going about it in a mighty poor way.*

Now, finally, the factor of clubbing the States has been talked about. I am a Calhoun Democrat in the matter of State rights. I believe that the invasion of State rights by the American Congress in recent years has been absolutely unpardonable, and if persisted in will break down the structure of our Government. Many of us believe that, and yet we argue, as the Senator from Idaho argued with such ability a few minutes ago, that if we repeal this tax we will see a campaign started in the various States to get them to repeal their inheritance taxes. Well, if my conception of government is right, what business is it of ours whether a campaign like that is started? What business have we got to concern our-

selves with what campaign is started in the State of Idaho to make the people there change their taxes?"

Page 3377 Senator REED also said:

"The obvious effect of that upon the States is this: Each State legislature says to itself: 'Our citizens are going to pay so much inheritance tax. If we put our rate up to 16 per cent, we will get the money and keep it here in our State treasury. If we do not do that, the money goes out from our citizens just the same, but it goes to Washington.' So they are going to do just what my State did last year, in 1925. It passed a law providing in substance that our inheritance tax should be the maximum amount that was allowed under the Federal law to be rebated to the taxpayer; and every other State will take that maximum, because it knows that the citizen has to pay the money, and it would rather get it for the State treasury than have it come here."

At page 3381 the Senate Committee Amendment striking out the House provisions as to the estate tax was adopted—yeas 49, nays 26.

These arguments by the able Senators are unanswerable. They defended the Constitution as repeatedly interpreted by this Court, but all to no purpose. The die had been cast in the House—Florida must be punished. The Constitution and all the arguments predicated thereon availed her nothing in the Halls of Congress. She now brings her case to the Bar of this Court, asking that her sovereignty, her autonomy and her self-respect be protected upon the original conditions of her admission into the Union.

G. THE CONFERENCE REPORT, AND THE HOUSE AND SENATE DISCUSSIONS THEREOF SHOW THAT NO PART OF THE ESTATE TAX, TITLE III, WOULD HAVE BEEN ADOPTED WITHOUT THE EIGHTY PER CENT; HENCE IF THE CREDIT PROVISION WAS VOID, THE WHOLE TITLE IS VOID.

The Conference Report was spread upon the record Feb. 22, 1926 (Cong. Rec. pp. 4089 to 4109).

At page 4091 it appears that the House provisions as to the estate tax were restored to the bill with slight changes, except to increase the exemption from \$50,000.00 to \$100,000.00. At page 4106 is the following explanation of the changes:

“On amendment No. 100: The House bill imposed an estate tax and imposed rates upon the net estate ranging from 1 to 20 per cent. The rate of 20 per cent was imposed upon the amount by which the net estate exceeded \$10,000,000. The House bill permitted a credit against the estate tax of any estate, inheritance, legacy or succession taxes actually paid to a State or Territory or the District of Columbia in respect of any property included in the gross estate. The House bill limited this credit so that it could not exceed 80 per cent of the estate tax imposed. The Senate bill repealed the estate tax. The House recedes with an amendment restoring the estate tax and the rate structure of the House bill, but increases the exemption in computing the net estate from \$50,000 to \$100,000. The 80 per cent credit of the House bill is retained. The credit provision in the House bill provided that this credit should only include such taxes as were actually paid and credit therefor claimed within four years after the filing of the return. The amendment reduces this period to three years, because the amendment as agreed to also reduces the time for assessment and filing claim for refund to three years instead of four years as provided in the House bill. The provisions relative to the assessment and collection of

estate taxes are changed in the amendment as agreed to, to correspond to the similar provisions for the collection and assessment of income taxes. The Senate bill reduced the rates imposed by the revenue act of 1924 in case of the estate tax and the gift tax by substituting for such rate the estate-tax imposed in the revenue act of 1921, and these rates as applied to the 1924 estate tax and gift tax are retained in the amendment as agreed to."

As heretofore noted, the increase of the exemption made the chances of any net revenue to the Government out of the estate tax entirely disappear, so that more than ever *the purpose to coerce the States or punish them for their stubbornness clearly predominated.*

On February 23, 1926 (Cong. Rec. p. 4147) Chairman Green explained to the House his victory in Conference as follows:

"Mr. Speaker, in taking up the Senate bill with the conferees of the Senate we found, what probably every gentleman in the House knows, that never was there so much difference between the House and the Senate revenue bills as in this particular case, and in my 15 years' experience in Congress never has the Senate conceded as much as it yielded in agreeing to this settlement which we now present to you. The principal point of controversy, and the one on which there hinged the possibility that there might be no agreement whatever on the bill, was the *estate tax*. The Senate capitulated entirely upon the estate tax, and with a minor amendment, which affects it in an insignificant manner, has yielded upon that question. (Applause.)

In short, Mr. Speaker, the conferees of the House come back here with every principle of the bill as it was passed by the House intact. (Applause.) Every tax that was in the bill before is in the bill now, with the single exception of the capital-stock

tax, which by agreement was shifted over to the profits tax on corporations in order that the corporations might make only one return, and to save the difficulty there was in assessing the capital-stock tax."

On February 24, 1926, the Senate admitted its defeat, but not without leaving an indelible record of how the Constitution had been raped without the consent of the Senate. At page 4192 Cong. Rec. Senator SMOOT, Chairman of the Finance Committee, and one of the conferees, said in part:

"With reference to the estate tax, the wide difference in action by the two bodies of Congress, together with sharp insistence on the part of each group of conferees for the maintenance of the position taken by their respective bodies, made inevitable that no agreement could be reached except by way of a compromise. The final result of the continued discussion was, with reference to the future, to raise the exemption from \$50,000 to \$100,000, to adopt the rates stated in the House bill, to approve the 80 per cent credit for taxes paid to the States, and to make the rates of the 1921 law apply to the estates of decedents who died while the 1924 law was effective, with the application of the 25 per cent credit to such cases.

* * *

Notwithstanding that situation, the House conferees refused to agree to the repeal of the estate tax. Yet they supported the 80 per cent credit provision. It seemed to the Senate conferees that the only real difference of opinion between the two branches of Congress was the favoring of an 80 per cent credit as compared with a 100 per cent credit. In that situation the Senate conferees yielded upon obtaining the extension of the exemption to \$100,000 and the continuation of the 1921 rates with a 25 per cent credit, through the period that the 1924 law was in operation."

At page 4194 Senators FLETCHER and SMOOT said:

“Mr. Fletcher. With further reference to that feature of the bill I regret to see that the Senate conferees yielded in respect to the estate-tax provision in the bill. It seems to me they yielded a very important and vital principle and that they should have insisted upon the Senate action with respect to the estate tax.

Mr. Smoot. I want to say to the Senator that the conferees on the part of the Senate did insist upon it until—I do not know that I am betraying any confidence, for I have noticed that some one reported the circumstances to the press—the House conferees left the room. This was the ultimatum to the Senate conferees: ‘Unless that provision goes in, there shall be no bill,’ in just so many words.”

On the same page, Senator SIMMONS, of North Carolina, another of the conferees, said:

“The question of estate tax from the very beginning of our conferences assumed paramount importance, the House conferees asserting in the beginning that it was absolutely necessary that the provision be retained. All through the five days that we were engaged in conference that point would constantly bob up. I thought at one time, like the Senator from Florida now expresses himself, that possibly there was some element of bluff in it. I am not a good poker player, having played it only once in my life, but I have seen a good deal of bluff in my life and I set my ingenuity to work to find out whether this was bluff or whether it was a fixed and immutable position. I became satisfied that it was impossible for us ever to come to an agreement unless we conceded that proposition to the House. I became satisfied that they would concede almost anything to get that provision. Indeed, one of the conferees on the part of the House stated that he would rather have no tax bill at all than to have that provision stricken out.

I think it was the opinion of every one of the conferees on the part of the Senate that it was absolutely necessary that we should yield, and so we did."

At page 4196 Senator Fletcher again protested against this monstrous legislation, and at page 4199 Senator DILL, of Washington, agreed that the position of Senator Fletcher on the eighty per cent credit proposal was absolutely correct. At page 4200 Senator SIMMONS, of North Carolina, said:

"I fought it because I think it is contrary to the genius and spirit of our institutions, because I believe if this kind of legislation shall prevail in this country, if this shall become a settled policy, *if this precedent shall be again acted upon and carried down the line so as to include income taxes and gasoline taxes and other taxes of similar character*, we shall soon reach the point where the rights of the States will be so materially interfered with and the coercion upon them will be of such a nature that the very foundation of our system of government will be undermined if not overthrown.

We have two separate sovereignties here in America, cooperating and coordinating, and so long as they continue to cooperate as provided in the Constitution there is no danger to the sovereignty of either, but *when one of these sovereignties, by reason of its immense power, by reason of its supreme power under the Constitution within the limitations of its authority, grows sufficiently strong to establish a system that undermines the sovereignty of the other, then our Federal representative system will go to pieces.*"

* * *

"Mr. President, I did not rise for the purpose of discussing the inheritance tax. The Senate conferees had to agree to its retention; but I assure every Member of the Senate that we did so with the greatest reluctance. We did not do it except

as a last resort. We knew the people of the United States were demanding the enactment of this bill; we knew that if we did not come to an agreement the people would lose the benefit of this legislation, at least upon the incomes of 1925, and rather than make a deadlock and say to the country, 'We will not permit the passage of this measure to which the people are looking with such hope and expectation,' we agreed to the retention of the estate-tax provision."

At page 4207 Senator BRUCE, of Maryland, said:

"As I view the House proposition there is an indelible impress of inequality, of lack of uniformity, of injustice. I never saw a thing in my life framed with so much elaborate artifice and ingenuity. *So far as taxation is concerned the Federal estate tax would be nothing but a water haul.* So far as creating a rankling sense of injustice and wrong, it will be a potent instrument for evil, indeed.

It strikes me that this estate tax proposition is an obnoxious and, to my mind, a monstrous—I use the term advisedly—invasion of State's rights and the fundamental right of the States that is involved. *Will not somebody please, for the love of God, tell me what right does the Federal Government propose to leave to the States?* I have gotten to the point now that I feel that it is really unnecessary, idle, futile to raise my voice in remonstrance against any further spoilation of State sovereignty.

• • • •

Here is the State of Florida that chose, in the exercise of its views of public policy, to adopt a constitutional provision doing away with any estate tax at all. Here is another State like my own in which there is nothing but a collateral inheritance tax. *And now it is the purpose of the Federal Government to apply to every State in the Union, the State of Florida, my State, and every other State, the Procrustean theory of tyrannical uniformity.*

I resent it as an American citizen, and I would have been untrue to myself and to my profoundest convictions if I had not, to this extent at any rate, voiced my resentment."

The Senate, however, realized that further protest was hopeless, and hence the Conference Report was adopted (Cong. Rec. p. 4214), and the bill was subsequently approved by the President.

Some scientist said: "If I had a lever long enough, I could lift the world." Another replied: "The lever would be useless without a fulcrum." In the case now under consideration the eighty per cent credit provision was used as the lever, the instrument by which to coerce State action or administer punishment for refusal to obey, but the instrument chosen would be a failure and unworkable without the other provisions of Title III. The hearings before the Ways and Means Committee and the debates in the House show that the other provisions of Title III were retained solely as a supporting basis or fulcrum upon which the eighty per cent credit provision could operate. Therefore, if the credit provision is void, Title III of the Act is void in its entirety.

Warren v. Charleston, 2 Gray, 84;

Pollock v. Farmers Loan & Tr. Co., 158 U. S. 601;

Wolff Packing Co. v. Industrial Court, 267 U. S. 552;

Trusler v. Crooks, 46 Sup. Ct. Rep. 165.

3. Operation and Effect of the Estate Tax Provisions.

This point was illustrated in many ways by the arguments in the Senate, some of which have been quoted. As a concrete example of the effect of the Act of 1926, it has come to our attention that the Tax Commissioner of the State of Georgia has broadcasted a circular letter reading as follows:

"NEW INHERITANCE TAX LAW OF GEORGIA MORE ADVANTAGEOUS.

Georgia Has No Income Tax and No Inheritance Tax Except to Claim the Federal Exemption.

'Georgia's Inheritance Tax Law—the new law enacted in the session of the legislature of 1925 and the extra session of 1926—is more advantageous to the property owner than that of almost any other state; more so by far than the non-inheritance tax law of Florida', said State Tax Commissioner James H. Dozier.

'In my judgment the provisions of the new Georgia law ought to be advertised to the world in comparison with that of other states. The controlling feature of the new law in this state provides:

"From and after the passage of this Act it shall be the duty of the legal representatives of the estate of any person who may hereafter die a resident of this state, and whose estate is subject to the payment of a Federal Estate tax, to file a duplicate of the return which he is required to make to the Federal authorities, for the purpose of having the estate tax determined, with the State Tax Commissioner. When such duplicate is filed with said official he shall compute the amount that would be due upon the said return as Federal Estate Tax, under the

Act of Congress relating to the levy and collection of Federal Estate Taxes, upon the property of said estate taxable in Georgia, and assess against said estate as state inheritance taxes eighty per centum of the amount found to be due for Federal Estate Taxes—There shall be no other inheritance tax assessed or collected out of estates of persons dying after the passage of this act, under the laws in this state.”

‘There you are. Analyze the Act and see just what it means, then compare it with the laws of other states, particularly the so-called non-inheritance tax states. The analysis shows the Georgia law is far better than if the legislature of the state, as have been done in other states, merely has passed a law prohibiting the levy or collection of any inheritance tax. The why is clear. Take an estate in Florida, for instance, large enough to have levied against it by the Federal Government as an estate tax say \$75,000. Florida has no inheritance tax of any kind, but the Federal government levies a \$75,000 estate tax, collect it and the whole amount goes into the Federal treasury, with not one penny of benefit, so far as that \$75,000. goes, to either the estate or to the State of Florida.

‘Make the same calculation in Georgia. The same kind of an estate, of the same value, finds a Federal estate tax levied against it of \$75,000. The Federal law provides that this estate is entitled to an exemption of 80 per cent of the levy made against it for Federal estate taxes PROVIDED THAT 80 PER CENT HAS BEEN PAID THE STATE IN WHICH THE ESTATE IS LOCATED, AS AN INHERITANCE TAX. Do you get it? In the Florida case the Federal government can give no exemption, nor can the state claim it, because there is no state inheritance tax, therefore the Federal government has to take the whole \$75,000. In Georgia the Federal government assesses \$75,000. against the estate, credits that estate with an exemption of four-

fifths of the amount levied and takes one-fifth into the Federal treasury, the four-fifths which is credited as an exemption going into the treasury of Georgia. In both cases the estate pays only the \$75,000; in our case we get our share for applying to the expense of operating our state government. The non-inheritance tax states are, of necessity, compelled to supply that deficiency in the source of revenue by taxing other property on which there is no Federal exemption.

'Doesn't that make it quite clear just why the Georgia law is better than those laws which other states are advertising to the world as a great attraction to people to become residents? I think so, and am quite sure people who are to be attracted because of such advantages will so find if they are informed on just what the provisions of the Georgia law are.'

Mr. Dozier, in a casual way, carried his illustration further to show that, if Congress passed an Act reducing the Federal estate tax, automatically that reduces the aggregate amount to be levied before the exemption and, therefore, affects this state just as it would the Federal government and, whenever the Federal estate tax is finally wiped out, under the present Georgia law the whole inheritance tax in this state also is eliminated. He is quite enthusiastic over the idea that these details and comparisons should be brought to nation-wide attention in any advertising campaign by Chambers of Commerce, civic and commercial organizations and the large Georgia advertisers contemplate.

Georgia has NO INCOME TAX.

Georgia has NO INHERITANCE TAX."

Such is the fruit of Chairman Green's plan. The State of Georgia says plainly that it does not want this tax and if the Federal tax is abolished it will have none. Nevertheless, the State of Georgia calls a Special Session of the Legislature to amend its laws so that its people may ob-

tain credit on the Federal tax up to eighty per cent. This action it took as a matter of self defense. It was pointed out in the hearings before the House Committee that following the Act of 1924, Pennsylvania and New York took similar action, and it is presumed that they have or will follow the action of Georgia as exemplified by this circular letter. It is presumed that the force of the eighty per cent credit provision is now sufficient to compel similar action by other States.

"The effect is to fetter and degrade the State governments by subjecting them to control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character."

Slaughter House Cases, 16 Wall. text 78.

Under compulsion of the Federal Statute, Georgia and other States are forced to pass Acts of reprisal and discrimination against Florida and Alabama. The Commissioner of Internal Revenue on an estate of the same size collects only twenty per cent in Georgia and one hundred per cent in Florida and Alabama, although the taxpayer in Florida and Alabama has heretofore borne his full share of the burden in supporting the local State government. The question then arises, shall Florida yield her sovereignty in shameful submission to the Federal mandate? Must Florida and Alabama, by force of Federal law, be compelled to remake their Constitutions? If this be so, the stars should fade from the Banner we love, for the States, like the Provinces of Canada, would no longer have any proper places in the National Flag.

The State of Florida has the right, in its capacity as a State to attack the constitutionality of the Federal Estate Tax by an original Bill in this Court.

“It is enough that the bill is a reasonable and proper means to assert the alleged quasi sovereign rights of a State.”

Missouri v. Holland, 252 U. S. 416, 431, and cases cited.

In the case of

Texas v. White, 7 Wall. 700, 725, this Court said:

“The preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.”

In the same case at page 721 this Court also said:

“In the Constitution the term *state* most frequently expresses the combined idea just noticed, of *people, territory, and government.*”

Being mindful of what constitutes the State of Florida, the inquiry arises in what manner and in what respects does the Federal Estate Tax violate her rights as a State?

The State's bill shows, and the matters to which the Court's attention has been called in this brief, show that the sovereign rights of the State of Florida have been violated in three aspects:

1. THE OPERATION AND EFFECT OF THE ESTATE TAX IS TO PENALIZE PRESENT AND FUTURE CITIZENS WHO CHOOSE TO LIVE AND DIE IN FLORIDA.

From time immemorial the imposition by one sovereignty of an unjust or penalizing tax upon the people of another sovereignty has been regarded as a sufficient cause for the latter sovereignty to declare war in defense of its citizens. The Attorney General for the State has aptly cited the "Boston Tea Party" in this connection. As stated in the case of

Kansas v. Colorado, 185 U. S., text 144:
 "War is a suit prosecuted by the sword."

Had Florida not become a member of the Union; had she not become a party to the compact represented by the Constitution, giving up her right to declare war, she would be justified under the law of nations in declaring war against any foreign power which undertook to impose such a penalizing tax upon her citizens. If, under the Constitution, Florida cannot by a peaceful method, prosecute her suit for that cause in this Court, then where is her compensation for the surrender of her right to declare war?

In the case of *Kansas v. Colorado*, *supra*, text 143, the following test was urged:

"Only those controversies are justifiable in this court, which prior to the Union, would have been just cause for reprisal by the complaining State, and that, according to the international law, reprisal can only be made when a positive wrong has been inflicted, or rights *stricti juris* withheld."

Applying that test to this case, would not Florida, if she had remained an independent State, be justified in making reprisal against the United States, or against other States, which discriminated against her under compulsion of Federal law? The decision in *Kansas v. Colorado*, holds that the right of a State to sue in this Court for the redress

of such wrongs is the constitutional substitute for the national rights surrendered by the State when she became a member of the Union.

But the proponents of this tax say to the State, you have no need for relief in the Supreme Court; you have an "adequate remedy at law," so to speak; as an alternative, you can amend your Constitution and then pass an inheritance tax law like Georgia, New York and Pennsylvania have done, and thereby prevent your citizens from being penalized. But has not the State, or rather the people constituting the State, the right under the Federal Constitution to say what Constitution the State will have, so long as it provides for a republication form of government? And must the State surrender such right in order to avail itself of the so-called "remedy at law"? In the case of

Georgia v. Tennessee Copper Co., 206 U. S.,
text 237,

this Court held that such rights cannot be valued in terms of money. When General Marshall went to France on the X. Y. Z. mission, he thus replied to Hottenguer:

"To lend money under the lash and coercion of France is to relinquish the government of ourselves and to submit to a foreign government imposed on us by force. We will make at least one manly struggle before we thus surrender our national independence."

On his return to America a banquet was given in his honor, at which was coined the American slogan,

"Millions for defense but not a cent for tribute."

Beveridge, *Life of John Marshall*, Vol. II, pages 275 and 348.

The Declaration of Independence breathes the same spirit. Sundry clauses of the Constitution requiring uniformity in Federal legislation and the Tenth Amendment all mean the same thing. Must Florida and its citizens

pay tribute to the extent of eighty per cent more of the Federal tax than is collected in Georgia and other States? Must she pay it as a *penalty*, and not for the purpose of defraying the fiscal needs of the Federal Government?

That Florida people will be penalized there can be no question. She supports her splendid school system largely by a fund derived from the sale of public lands donated by the Government to the State in 1845, "in consideration of concessions made by the State." This statute was quoted by the Florida Supreme Court in the case of

Everglades S. & L. Co. v. Bryan, 87 So. text 70.

That fund is supplemented by a small millage on real and personal property. By means of the gasoline tax the State is building her magnificent system of highways. To pay the general expenses of the State Government, she imposes an ad valorem tax on real and personal property, and certain license taxes on various occupations. The point is that her present and future citizens, by one or more of these forms of tax, pay their share of the State's burden of Government, besides paying income taxes to the Federal Government. Therefore, when they are compelled to pay eighty per cent more estate tax than is imposed upon citizens of the State of Georgia and other States, such payment becomes a *penalty* for the privilege of passing any estate to their wives and children.

If the Court finds that the eighty per cent credit provision is void, and in consequence, that the whole of Title III is void, then we submit that Florida as a State is entitled to the relief demanded against such injustice and discrimination against her citizens.

The right of a State to sue in this Court for the protection of its people has been sustained in many cases. In

Missouri v. Illinois, 180 U. S. 208,

a bill by the State of Missouri filed in this Court was sustained to prevent the pollution of the waters of the Mississippi River. Said the Court, text 241:

“If the health and comfort of the inhabitants of the State are threatened, the State is the proper party to represent and defend them. * * * Moreover substantial impairment of the health and prosperity of the towns and cities of the State situated on the Mississippi River, including its commercial metropolis, would injuriously affect the entire State.”

The case of

New York v. New Jersey, 256 U. S. 296,

is a similar case where the State of New York filed its bill in this Court against the State of New Jersey seeking to prevent the pollution of New York Bay by discharge of a large amount of sewerage therein. Said the Court, text, 301:

“The health, comfort and prosperity of the people of the State and the value of their property being gravely menaced, as it is averred that they are by the proposed action of the defendants, the state is the proper party to represent and defend such rights by resort to the remedy of an original suit in this Court, under the provisions of the Constitution of the United States.”

In

Kansas v. Colorado, 185 U. S. 285,

the State of Kansas filed its bill in this Court to enjoin the State of Colorado from appropriating all the waters of the Arkansas River before they reached the State of Kansas. The bill was sustained upon the same theory as in the *Missouri* and *New York* cases just cited.

The case of

Wyoming v. Colorado, 259 U. S. 419,

was a bill filed by the State of Wyoming to prevent similar appropriation by the State of Colorado of the waters of the Laramie River. Said the Court, text, 468:

“As respects Wyoming, the welfare, prosperity and happiness of the people of the larger part of the Laramie Valley, as also a large portion of the taxable resources of two counties, are dependent upon the appropriations in that State. Thus the interests of the State are indissolubly linked with the rights of the appropriators.”

In

Georgia v. Tennessee Copper Co., 206 U. S. 230, the State of Georgia filed its bill in this Court, seeking to prevent the defendant, operating its works in Tennessee, from discharging obnoxious gases over a portion of the State of Georgia, and the State's bill was sustained.

The case of

Missouri v. Holland, 252 U. S. 416,

was not an original proceeding in this Court, but it was a bill filed in the District Court to prevent the game warden of the United States from attempting to enforce the Migratory Bird Treaty Act, asserting that the same was unconstitutional. The bill was dismissed by the District Court, and direct appeal was taken to this Court, and the Court pronounced the following doctrine, first head-note:

“Protection of its quasi sovereign right to regulate the taking of game is a sufficient jurisdictional basis, apart from any pecuniary interest, for a bill by a State to enjoin enforcement of Federal regulations over the subject alleged to be unconstitutional.”

The decision of the District Court was sustained, however, because of treaty rights then existing between the United States and Great Britain.

In

Colorado v. Toll, 268 U. S. 228,

the State of Colorado filed its bill in the United States District Court to enjoin the enforcement of certain regulations by the Superintendent of a National Park. Among other things, the Superintendent claimed under his own regulations the right to exclude the use of the highways through the park by automobiles operating for hire, except by one corporation. He also asserted the right to exact a license fee from privately owned vehicles. The District Court dismissed the bill, and on direct appeal the decision was reversed. The State's cause of action in this case and also in the *Holland* case, was recognized to be such as would have sustained an original bill in this Court.

In one of this group of cases was it deemed essential that the State should suffer injury in a pecuniary or proprietary capacity. Undoubtedly if an independent sovereignty undertakes to impose a *punitive tax upon the people of the State*, then such State, for the protection of its people, has the right to file a bill in this Court to prevent the imposition of such tax, if it can be shown that the statute under which such tax is sought to be imposed is void because in violation of the Federal Constitution.

2. THE ESTATE TAX OPERATES TO DISCRIMINATE AGAINST THE TERRITORY OF FLORIDA, RETARDS ITS DEVELOPMENT, DECREASES THE VALUE OF PROPERTY PRIVATELY OWNED AND PUBLICLY OWNED BY THE STATE, AND THUS DECREASES TAXABLE VALUES, FROM WHICH THE STATE DERIVES ITS REVENUE.

As already noted, this Court pointed out in *New York v. New Jersey*, 256 U. S. 296, that the State has the right to be heard for the protection of its people, when their

property and the value of their property is gravely menaced. In the case of

Georgia v. Tennessee Copper Co., 206 U. S.
text 237,

the Court said:

"This is a suit by a State for an inquiry in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domains. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air.
• • • It is not lightly to be required to give up quasi-sovereign rights for pay; and, apart from the difficulty of valuing such rights in money, if that be its choice it may insist that an infraction of them shall be stopped."

It is, therefore, a proper inquiry whether the territory of Florida as such will suffer damage by this law, and whether the value of the property of its people will be decreased, resulting in a decline in taxable values of such property, from which the State derives its revenue.

The Federal Estate Tax says to all men of wealth: You can go to Florida only as a tourist. It says to them: You cannot make any investments there or take part in the development of the State with the idea of making it your home, unless you are willing upon your death that your wives and children should be penalized for eighty per cent more of the estate tax than they would have to pay in other States. The very effect intended by Chairman Green and those responsible for the passage of this law, was to stop the flow of people and money into the State of Florida—to check its development. Whether the actual stoppage be small or great, the principle is the same. The discrimination created is contrary to the letter and spirit of the Federal Constitution.

In *Fairbank v. United States*, 181 U. S. 283, the Court pointed out that the smallness of the stamp tax upon export bills of lading was immaterial; that the constitutional prohibition meant that exports from any State must be absolutely free. So here, the constitutional requirement of geographical uniformity in the operation of an excise tax will not compromise with the extent of the lack of uniformity. If discrimination to any extent exists, the statute so providing is void.

The effect of the Estate Tax in its operation is analogous to what is known in Louisiana as "slander of title," and in other States "clouds on title." Every foot of land, every ray of sunshine, every breeze that blows in Florida, is affected by the cloud thus created.

It seems appropriate here to mention a few instances of developments in Florida which are common knowledge in this State. Many years ago Mr. Plant built the railroad which is now known as the Atlantic Coast Line, from Jacksonville to Tampa, and also what was then a palatial hotel at Tampa known as the Tampa Bay Hotel. On the east coast Mr. Flagler built what is now a splendid double track railroad from Jacksonville to Miami, and single track from there across the keys to Key West, with a chain of palatial hotels along the way. The railroads built by these two men opened up for development large areas of wild territory. More recently, Mr. Baron G. Collier, well-known publisher, bought the whole south end of Lee County on the southwest corner of the peninsula, including the southwest corner of the Everglades. By Chapter 9362, Laws of Florida, 1923, Collier County was created and given his name. He spent millions developing the territory, bringing people into it, building highways and draining swamp areas. On the east side of the Everglades, Mr. J. N. Connor bought large tracts of land, and afterwards, but prior to the constitutional amendment of November, 1924, he built at a cost of several million dollars, what is known as Connors Highway across the north end of the

Everglades, furnishing easy access from the east coast of Florida to the west coast. About five or six years ago Mr. J. C. Penney, one of the chain store kings of the United States, owning over 700 stores, built a home at Miami Beach. Afterwards he became interested in the farming possibilities of Florida. In February, 1925, he bought 120,000 acres of land in Clay County, about 30 miles from Jacksonville, not for speculation, but for the purpose of developing a system of co-operative farms upon the same principle upon which he had built up the chain of stores. His plan is working out well. In connection with this development he has established at Green Cove Springs, Florida, a school of Applied Agriculture, with Mr. Arthur A. Johnson, nationally known in such work, as its President and guiding spirit.

This Federal Statute says to all such men, and to others who might come to Florida for similar purposes: You cannot make Florida your home unless in case you die you are willing that your wives and children pay the penalty of eighty per cent more of the Federal Estate Tax than they would pay elsewhere. Such men came to Florida not as tax dodgers. They have greatly aided in its development and Florida needs more like them. If Florida has been able to stay out of debt and has a surplus in its treasury of over fifteen million dollars under her present forms of tax, and desired by constitutional amendment to make permanent a policy of no state inheritance tax, that is her perfect right. If such tax conditions are inducements to men of wealth who will aid in her development, that also is entirely legitimate. Such inducements, if inducements they are, have many historical precedents. In 1850 Congress granted to Arkansas and other States, including Florida, vast areas of swamp and overflow lands in trust for the purpose of internal improvement. The States donated large areas of such lands to railroads to encourage capital to penetrate undeveloped territories. If Florida can get along without an inheritance tax, whose business

is it but Florida's? The advocates of this tax boldly asserted that the tax was intended to stop Florida's progress, if possible. Such stoppage must necessarily bring decreased values, with lower taxation values and loss of revenue to the State and great injury to the people of the State. That injury is common to all, whether they own much or little, and the injury thus produced is one against which it is the State's province to protect under the law as defined in the cases last cited.

As already noted, it is not essential that the State should sustain a pecuniary loss, or sustain an injury in its proprietary capacity, but if that were necessary, the statutes of the State of Florida, Sections 1054 to 1093, Rev. Gen. Stat. of Florida, and many decisions of its Courts, particularly

Everglades S. & L. Co. v. Bryan, 81 Fla. 75, 87
So. 68, Writ of error dismissed 257 U. S. 667,

show that the State still owns vast areas of what is known as the Everglades, as large as the State of Connecticut, also tide lands, and hence the injury which will be suffered by the people of Florida in decreased values of their lands will be shared in common by the State itself.

3. THE SOVEREIGN RIGHTS OF THE STATE AS A GOVERNMENT ARE IMPAIRED BY THE FEDERAL ESTATE TAX.

This proposition has a broader significance than any of those so far discussed. It goes to the very foundation of our Government. It raises the question whether or not there shall still remain an indestructible Union comprised of indestructible States. Suppose Canada should say, "We don't like your Volstead Law—we have seized your ships; change your law and we will release your ships." Or suppose Japan should say, "We don't like the California Land Law; we have seized your ships and your citizens; change your law and we will release your ships and your citizens." The provisions of the Federal estate tax under-

takes to speak in similar fashion to the State of Florida and Alabama, and other States similarly situated. The mandate of the Federal law invades the very functions for which State Governments were created, and undertakes to censor and determine for the States what form their tax laws shall take, and even what shall be the substance of their Constitutions on that subject. It is no answer to say that the States need not change their laws and their Constitutions if they see fit not to do so. If the ships and citizens of the United States had been seized by Canada or Japan under the circumstances stated the United States would not take such an answer as sufficient. The force behind the Congressional mandate is one of duress upon the people and the property of those people in the several States—that is to say, change your law as our mandate requires unless you wish your people penalized; the territory of your State discriminated against; your development stopped; your property values decreased; your sources of revenue to defray the expenses of State Government cut off. When Chief Justice MARSHALL decided the case of

Barron v. City of Baltimore, 7 Peters 243,

little did he think the day would ever come when Congress would actually engage in the

“extraordinary occupation of improving the Constitutions of the several States.”

If the decision of this Court in the case of

Ward v. Maryland, 12 Wall. text 427,

means anything, the power of a State to tax for State purposes, and the power of a State to determine what forms of tax it will utilize, are exclusive powers in the States, which may not be controlled, directly or indirectly, by an Act of Congress. Along the same line, this court in the case of

City of New York v. Miln, 11 Peters, text 139,
139,

said:

"A State has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation; where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of this, *it is not only the right, but the bounden and solemn duty of a State to advance the safety, happiness and prosperity of its people*, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained in the manner just stated. That all those powers which relate to ~~merely~~ municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, *in relation to these, the authority of the State is complete, unqualified and exclusive.*"

To like effect are:

Linder v. United States, 268 U. S. 5;

Trusler v. Crooks, 46 Sup. Ct. Rep. 165.

As pointed out by the able Senators in the discussions of this bill when pending before the Senate, if this law is allowed on the Statute books as a precedent, there is then no limit to which Congress may not go in controlling State action under the guise of some one of the powers vested in Congress by the Constitution. State lines will be wiped out and we will simply have a super State with provinces or dependencies, instead of what we have heretofore understood as indestructible States possessed of quasi-sovereign powers.

We have shown that the right of the State to maintain its bill exists for three reasons.

1. To protect the rights of its people from a penalizing tax.

2. To protect its territory from the discrimination created by this tax.

3. To protect its rights as a Government to pass such laws as it may deem wise for the government of its people.

4. THE SUIT IS PROPERLY BROUGHT AGAINST THE SECRETARY OF THE TREASURY AND THE COMMISSIONER OF INTERNAL REVENUE.

A void statute is as no statute.

Town of South Ottawa v. Perkins, 94 U. S. 260, 267.

When a Federal official undertakes to act under a void statute or void authority, he has no protection, though he assumes to act in the capacity of a Federal officer.

United States v. Lee, 106 U. S. 196.

In other similar cases it has been held that such a bill by a sovereign State is properly brought against such officers.

Minnesota v. Hitchcock, 185 U. S. 373;
Massachusetts v. Mellon, 262 U. S. 447.

Conclusion.

Florida sues to prevent the imposition of an unconstitutional and punitive tax upon her people. Florida sues to protect the peninsula known as Florida from an unconstitutional discrimination. Florida sues to protect and preserve her exclusive right as a sovereign State to make and continue such laws for the government of her people as hitherto have been considered of the most ordinary and fundamental state concern. Florida believes there is still some virtue in the 10th Amendment. The Federal Estate Tax offers to Florida and other States similarly situated, these alternatives: the one to supinely permit her people

to be penalized and the title to her fair peninsula slandered, or, the other, to bow in shameful submission to the mandate of Congress to remake her Constitution, and then pass such inheritance tax laws as Congress dictates. She believes that the time has not yet come when she must degrade herself by making a choice between such evils. To this Court she commits her liberties, what of right and justice ought to be done.

Respectfully submitted,

THOS. B. ADAMS,
Amicus Curiae at the request of the
State of Florida.

I, J. B. Johnson, as Attorney General for the State of Florida, do hereby certify that I have read the foregoing brief and I hereby request that the same be filed and considered in connection with the brief filed on behalf of the State of Florida.

This September , 1926.

J. B. JOHNSON,
Attorney General for the State of Florida.

I, Thomas B. Adams, do hereby certify that on the day of September, 1926, two copies of the foregoing brief were duly mailed to the Honorable Andrew W. Mellon, Secretary of the Treasury at Washington, D. C., and that on the same date two copies of said brief were duly mailed to the Honorable David H. Blair, Commissioner of Internal Revenue, at Washington, D. C.

Respectfully submitted,

THOMAS B. ADAMS,
Amicus Curiae.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1926.

"No. _____, Original."

STATE OF FLORIDA, *Complainant*,
vs.

ANDREW W. MELLON, as Secretary of the Treasury of
the United States; and DAVID H. BLAIR, as Com-
missioner of Internal Revenue of the United
States, *Defendants*.

**REPLY BRIEF SHOWING JURISDICTION OF THE
COURT, AND THAT THE STATE'S BILL
SHOULD BE FILED.**

THOMAS B. ADAMS,
Amicus Curiae at the request of the
State of Florida.

Jacksonville, Florida.



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State's Case and Objections Thereto.

Collector v. Day, was the converse of *McCulloch v. Maryland*. So the case at bar is in many respects the converse of *Osborn v. Bank*. In the language of Chief Justice Marshall, 9 Wheat. 847-9:

"A denial of jurisdiction forbids all inquiry into the nature of the case."

And if jurisdiction be not exercised in this case the State

“stands naked, stripped of its defensive armor, and incapable of shielding”

its citizens from a penalty imposed by Congress under the guise of a tax, and incapable of protecting its territory from a geographical discrimination, and incapable of protecting itself as a Government from the invasion of its sovereignty and jurisdiction by an act of Congress. In the *Osborn* case, 9 Wheat, text, 849, the Court said:

“The question, then, is, whether the constitution of the United States has provided a tribunal which can peacefully and rightfully protect those who are employed in carrying into execution the laws of the Union, from the attempts of a particular State to resist the execution of those laws.”

The converse of this inquiry is equally pertinent in the case at bar.

Paragraph V. of the State's Bill alleges that since the effective date of the Act many persons subject to the Act have died, and that the defendants are proceeding with the enforcement of the Act in respect to the estates left by such decedents. This, then, is a real case, and not a hypothetical case as in *New Jersey v. Sargent*, 269 U. S. 328.

Paragraphs VII. and IX. of the State's Bill complain of a territorial discrimination against Florida, and also of a penalty imposed against its citizens under the guise of a tax.

Paragraph VI. of the State's Bill alleges:

“That under and by the terms and provisions of the said Revenue Act of the United States, aforesaid the sovereign rights of the State of Florida have been invaded and this Revenue Act is a direct effort on the part of the Congress of the United States—

(a) To coerce the State of Florida into imposing and levying an estate or inheritance tax, and

(b) To penalize the State of Florida and its property and citizens for the failure upon the part of the State to impose a tax or excise on estates of decedents or inheritance tax.”

These allegations show that the Act complained of is now operating to nullify Florida's late Constitutional Amendment. The State, therefore, complains not only of a territorial discrimination, and a penalty imposed under the guise of a tax, but also that the Act complained of is a bold invasion of its sovereignty and jurisdiction; of its right as a Government to determine what laws shall be operative within its boundaries for the government of its own people in matters peculiarly and exclusively of State concern.

This is not a voluntary 50/50 proposition to obtain a benefit from the national treasury, nor does it involve an alleged unlawful appropriation and expenditure of the national funds, nor are the complaints which Florida makes common to every citizen in the United States. For all of which reasons this case is entirely unlike *Mass. v. Mellon*, 262 U. S. 447.

The Solicitor General presents these objections to the filing of the bill:

1. Section 3224 United States Revised Statutes;
2. State suffers no direct injury;
3. State cannot sue as *parens patriae*.

Section 3224 Not Applicable.

Clause 2, sec. 2, art III. of the Constitution confers original jurisdiction upon this Court

“In all cases * * * in which a State shall be a party.”

And section 3224 U. S. Rev. Stat. is not competent to restrict that jurisdiction, even if the State's case involved merely a tax, and not a penalty under the guise of a tax, and not an invasion of the State's sovereignty and jurisdiction.

“The Supreme Court possesses jurisdiction derived immediately from the Constitution, and of which the legislative power cannot deprive it.”
7 *Cranch* 33.

Stevenson v. Fain, 195 U. S. 165, 167.

On the other hand, it has been held that Congress cannot enlarge the original or appellate jurisdiction of this Court.

Marbury v. Madison, 1 *Cranch*, 137 174;
Gordon v. United States, 117 U. S. 702.

In the case of *Florida v. Georgia*, 17 Howard 492, it was held that this Court had power to adopt its own procedure in the exercise of its original jurisdiction without any enabling Act of Congress.

Sec. 3224 U. S. Rev. Stat. was never intended to apply to a suit by a State on original bill in this Court. One obvious reason is that in such suit there can be no temporary halting of the revenue of the Government as there would be if injunctions were permitted

at the suits of individuals suing in the District Courts. Another reason is that at the suits of individuals in the various District Courts there might be a variety of rulings before an authoritative decision by this Court could be had; whereas when a State sues in this Court there can be but one ruling, final in its effect and coextensive with the Act affected thereby. This objection, and the brief of the Solicitor General, like a general demurrer, admit for the sake of the argument that the estate tax as provided in the Revenue Act of 1926 is unconstitutional and void for the reasons assigned in the State's bill. That being true, the collection of such penalties for unconstitutional purposes, and such invasion of the State's sovereignty should be stopped at the threshold.

Issues Justiciable, State Competent Plaintiff, and This Court Has Original Jurisdiction.

These propositions embrace the second and third objections of the Solicitor General.

"The mere circumstance that a State is a party gives jurisdiction to the Court."

Cohens v. Virginia, 6 Wheat. 383.

"In cases where a State is a party on the record, the question of jurisdiction is decided by inspection. If jurisdiction depend, not on this plain fact, but on the interest of the State, what rule has the constitution given by which this interest is to be measured? If no rule be given, is it to be settled by the Court? If so, the curious anomaly is presented, of a Court examining the whole testimony of a cause, inquiring into, and deciding on, the extent of a State's interest, without having a right

to exercise any jurisdiction in the case. Can this inquiry be made without the exercise of jurisdiction?"

Osborn v. Bank, 9 Wheat. 738, text 852-853.

So in the case at bar, the mere circumstance that Florida is the complainant gives this Court original jurisdiction, and hence the second and third grounds of objection are more in the nature of a general demurrer or motion to dismiss for want of equity.

The inquiries of whether the issues are justiciable and the State a competent plaintiff are of profound significance—they go back to the foundations of this Government.

Stamp Act and Tea Tax.

The Solicitor General at page 5 of his brief, says:

“The attempt at wholesale interference by a State in the collection, within its limits, of the revenues of the Federal Government is a startling innovation.”

We concede that this case is without precedent, but not in the aspect insisted upon by the Solicitor General. It is without precedent in that Congress never before, perhaps, has so boldly undertaken, under the guise of its power of taxation, to invade the governmental functions and powers of a State government, devising as a means to that end a form of duress upon the citizens and territory of a State or States at which the Act was directed.

The first recorded precedent in this country of wholesale opposition by a State or local government to a

tax, or penalty under the guise of a tax, imposed by a general or superior government, was the Colonial opposition to the Stamp Act imposed by the British Parliament. The data which clearly establishes this historical precedent has been collected in a report by a committee of the New York State Bar Association of January, 1915, afterwards presented by Senator O'Gorman, of New York, as Senate Document No. 941, 63d Cong. 3d Session, and contained in Senate Documents Volume 16. That report shows that the New York Bar Association appointed a committee of its most prominent members to examine into and report upon the right and duty of the United States Supreme Court to declare laws in excess of or in contravention of the Federal Constitution to be null and void. The committee, as appears page 49 of the report, sent out a questionnaire to leaders of thought, including Deans of law schools, jurists, learned lawyers and leaders of political parties, the fourth, sixth and seventh questions of which were as follows:

"4. When the framers of the federal constitution in the Constitutional Convention of 1787 voted down the project for a negative on state laws either by a federal council (like the Privy Council of England or the Federal Council of Germany) or by congress, who or what could they have depended upon to settle the inevitable conflicts between the laws and policies of the respective and increasing states, and between the states and the federation, and to enforce the respective bills of rights."

"6. Have you considered the views of Thomas Jefferson, Patrick Henry and Samuel Adams, that the legal check which a constitutional bill of rights puts in the hands of the judiciary was the best

means of upholding the constitution against legislative encroachments (5 Jefferson's Works (Ford ed.), 80-1; Samuel Adams' speech which persuaded Massachusetts to ratify the constitution; 2 Elliot's Debates, 131; Patrick Henry, 3 Elliot's Debates, Virginia Convention, 324-5, 539-41)?"

"7. Have you considered John Adams' views that the thirteen states had established by the right of the sword (9 John Adams' Works, 390-1), the correctness of Lord Coke's view that acts of parliament in derogation of the rights of Englishmen were void and that the Courts should refuse to enforce them (Quincy, Mass. Reports, 200, 441, 474, 521-7; 1 Henry's Life of Patrick Henry, pp. 79-107; 2 John Adams' Works, 525)?"

The committee after receiving responses from many sources, prepared and submitted their report, and therein themselves propounded and answered the following inquiries:

"Did the framers of the Constitution of the United States and the State Conventions which ratified it, intend that the Federal Supreme Court should refuse to enforce federal and State legislation in excess of or in contravention of its provisions?"

"If not, by whom and how did they intend to enforce the provisions of the bill of rights in the first ten amendments to the federal constitution; * * * also by whom and how did they intend to determine conflicts between federal and state power?"

"When the framers of the constitution freed themselves from parliamentary absolutism, did they intend to substitute a consolidated congressional absolutism in national matters plus the absolutism of forty-eight State legislatures in State matters, without providing any tribunal to uphold the privileges of freemen as defined by them in

the constitutional bill of rights, also to determine the inevitable conflicts between the Federal and State jurisdictions?"

The third conclusion reached by the Committee was as follows :

"III. The American Revolution was a lawyer's revolution to enforce the principle laid down in Lord Coke's, Lord Hobart's and Lord Holt's decisions that acts of parliament against common right or in violation of the natural liberties of Englishmen were void. Every colonial lawyer and some of the Royal Colonial Judges believed that Parliamentary taxation of the Colonies, without representation, although for imperial purposes, was unconstitutional. By the right of the sword, as John Adams puts it (IX Adams Works, 390-91; Mellwain, High Court of Parliament, pp. 63, 309-10), the American Revolution established Lord Coke's view of the common law as the constitutional law of the United States. It must be borne in mind that after the repeal of the stamp act, the imperial import duty of three-pence a pound upon tea, which led to the American Revolution, was intended to be laid for the service of the Imperial Government to make a more efficient Colonial Government and ultimately to support a Colonial Army under the control of the British Cabinet, and not in any way for the local relief or benefit of the British Treasury."

In support of this conclusion many English cases are quoted, together with quotations from leading lawyers and jurists of the Colony of Massachusetts, some of which were as follows :

"1761. James Otis, Writs of Assistance cases, Quincy Mass. Rep., 474, says :

‘As to Acts of Parliament: an act against the Constitution is void: an act against natural equity is void.’ ”

“James Otis drafted the address of the colonial convention of 1765 or stamp act congress, to the King, saying (*Tudor’s Life of James Otis*, 227):

‘To the English Constitution these two principles are essential, the right of your faithful subjects freely to grant to your Majesty, such aids as are required for the support of your government over them, and other public exigencies; and trial by their peers. By the one they are secured from unreasonable impositions, and by the other, from arbitrary decisions of the executive power.’ ”

“1765. John Adams in his argument on the memorial of Boston to the governor and council, said (*Quincy Reports*, 200):

‘The Stamp Act, I take it, is utterly void, and of no binding force upon us; for it is against our rights as men, and our privileges as Englishmen. An act made in defiance of the first principles of justice; an act which rips up the foundation of the British Constitution, and makes void maxims of 1800 years standing.

Parliaments may err; they are not infallible; they have been refused to be submitted to. An act making the King’s proclamation to be law, the executive power adjudged absolutely void.’ ”

“1765. Hutchinson, the Royal Chief Justice of Massachusetts, in 1765, speaking of the opposition to the stamp act, said (*Quincy, Mass. Reports*, 527):

‘The prevailing reason at this time is, that the act of Parliament is against Magna Charta, and the natural rights of Englishmen, and therefore, according to Lord Coke, null and void.’ ”

“1 Samuel Adams’ Writings (Cushing’s ed.), Instructions of the Town of Boston to its representatives in the General Court, September, 1765 (pp. 8-9) :

‘But we are more particularly alarmed and astonished at the act, called the stamp act, by which a very greivous and we apprehend unconstitutional tax is to be laid upon the colony.

By the Royal Charter granted to our ancestors, the power of making laws for our internal government, and of levying taxes, is vested in the General Assembly: and by the same charter the inhabitants of this province are entitled to all the rights and privileges of natural free born subjects of Great Britain: The most essential rights of British subjects are those of being represented on the same body which exercises the power of levying taxes upon them, and of having their property tried by juries: These are the very pillars of the British Constitution founded in the common rights of mankind.’ ”

“1 Samuel Adams’ Writings (Cushing’s ed.), Letter of November 11, 1765 (p. 28) :

‘So that this charter (of Massachusetts) is to be looked upon, to be as sacred to them as Magna Charta is to the people of Britain; as it contains a declaration of all their rights founded in natural justice.

By this charter we have an exclusive right to make laws for our own internal government and taxation.' "

The report also shows (p. 13) that on October 29, 1765, the House of Representatives of Massachusetts passed resolutions, the 11th and 12th of which read as follows :

"11. Resolved, that the only method whereby the constitutional rights of the subjects of this province can be secure, consistent with a subordination to the Supreme Power of Great Britain, is the continued exercise of such powers of government as are granted in the royal charter, and a firm adherence to the privileges of the same.

12. Resolved, as a just conclusion from some of the foregoing resolves, That all acts made by any power whatever, other than the General Assembly of this Province, imposing taxation upon the inhabitants, are infringements of our inherent and unalienable rights as men and British subjects, and render void the most valuable declarations of our charter."

Also, that on February 11, 1868, the House of Representatives of Massachusetts sent out resolutions to the Speakers of other Houses of Representatives in the other Colonies, urging action similar to that which had been taken by the Colony of Massachusetts, its leading public men and jurists. It is perfectly clear, therefore, that the third conclusion above quoted from the Committee's report is abundantly sustained by the historical facts; also that the opposition to what was deemed an unconstitutional tax, that is to say in violation of the Constitution of England and royal charters of the Colonies, was regarded as a proper matter

for *colonial* (State), and not individual action. Not only so, but sufficient for action by each and all of the Colonies banded together as a revolutionary army. Florida does not contemplate any appeal to arms, but this precedent is cited to show that her action as a State complaining of this penalty under the guise of a tax is by no means an innovation in the history and jurisprudence of this country.

The report beginning at page 18, also takes up "Australian decisions holding Commonwealth and State Laws *ultra vires*." Among others, the following:

"1908. In *King v. Barger*, 6 Commonwealth L. R., 42, 63-5, 74-80, the High Court of Australia held that a commonwealth excise tariff imposing an excise tax upon all goods not manufactured under labor conditions which had been approved by the Commonwealth Parliament or by the Court of Conciliation and Arbitration, was *ultra vires* as within the sole authority of the States, and also as authorizing discriminations between states or parts of states."

The Barger case was apparently quite similar in subject-matter and conclusions reached to the case of *Bailey v. Drexel*, 259 U. S. 20. At page 20 of the New York Report it is said:

"The Australian view appears to justify the American Revolution upon the same grounds upon which Pitt justified it, viz.: that the Stamp Act and the Tea Tax were unconstitutional, because there could be no taxation without representation."

The seventh conclusion of the New York Report (p. 29) was as follows:

“VII. Thomas Jefferson, Samuel Adams and Patrick Henry, the leaders of the radicals and fathers of the bill of rights embodied in the first to the tenth amendments, all believed it was the duty of the judiciary to refuse to execute laws in excess of or in contravention of the constitution, and particularly to enforce the bill of rights.

As Jefferson put it, a constitutional bill of rights was necessary, because of ‘the legal check which it puts into the hands of the judiciary.’ ”

Many extracts from Elliot’s Debates, and Writings of Jefferson and Madison are then quoted in support of this conclusion.

The eighth conclusion of the Report (p. 33) is as follows:

“VIII. All the framers of the constitution who have expressed their opinions on the subject (except four, one of whom subsequently changed his views and agreed with the majority) approved of the judiciary refusing to execute acts in excess of or in contravention of the federal constitution.”

This conclusion is abundantly sustained by extracts from Elliot’s Debates.

The ninth conclusion of the report (p. 39) is as follows:

“IX. Following the American Revolution, the English Privy Council and court of King’s Bench, without expressly overruling the decisions of Lord Coke, Lord Hobart and Lord Holt that an act of parliament contrary to natural equity or the rights of Englishmen was void, upon which the legal justification of the successful American Revolution was founded, made a series of decisions establishing the omnipotence of parliament. They hold that parliament was not merely the supreme legisla-

ture of the Kingdom of Great Britain, but its highest court as well, under the name of the High Court of Parliament."

The exhaustive investigation made by the New York Bar leads unerringly to these conclusions:

1. That the pre-revolutionary views of the Colonies as to the constitutional rights of a Colony (State) were transmitted into the present federal constitution.

2. That the constitution made conflicts between federal power and State power judicial questions.

(See also opinion of Chief Justice Taney, 117 U. S. 705.)

3. That this Court was created as the tribunal, independent of the executive and legislative departments, vested with power to settle such conflicts when arising under the Constitution and laws of the United States.

The schooling which the colonies and their statesmen had on the subject of constitutional law during the period immediately preceding the American Revolution makes it clear that when they came to frame the American Constitution their ideas so crystallized found expression therein by creating this Court as the one tribunal before whom conflicts between the power of the general government they were creating, and the power of the State Governments theretofore existing might be determined finally, peaceably, and without appeal to the sword.

The colonies (later States) having deemed resistance to a void tax as constituting a colonial (state) matter, it is clear that a State's suit resisting such a tax in this Court is a matter of State concern, and that a State need not for any asserted lack of direct in-

jury, await a chance suit by an individual. Moreover, Massachusetts and the other colonies in resisting the Stamp Tax and Tea Tax did not deem themselves acting *parens patriae*. On the contrary, they acted to protect their sovereign rights as colonial governments, secured to them under their colonial charters, similar to our present State Constitutions, which are protected by the Tenth Amendment.

Proceedings in the Constitutional Convention Demonstrate That This Court is Vested With Jurisdiction to Determine Conflicts Between Federal Sovereignty and Jurisdiction on the One Side, and State Sovereignty and Jurisdiction on the Other.

The New York investigation was an answer primarily to the late agitation for recall of judicial decisions, and while of great value, did not fully cover the proposition just stated. Under the Articles of Confederation there was no federal executive and no federal judiciary except that in art. IX. sec. 2, it was provided:

“The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more states, concerning boundary, jurisdiction, or any other cause whatever.” (1 Ell. Deb. 81.)

The first great principle settled almost unanimously by the convention was—

“That a national government ought to be established, consisting of a supreme legislative, executive, and judiciary.” (5 Ell. Deb. 133-134.)

This plan was adopted from the writings of Montesquieu. See *Federalist* No. 47 (Madison) Lodge ed. 299 to 304. The next problem was to determine what powers should be delegated to the general government and how the line should be marked defining the powers so delegated and the powers and residue of sovereignty reserved to the States. A further general problem was the distribution of power between the legislative, executive and judiciary departments of the general government, with proper checks and balances one against the other.

Mr. Hamilton represented the extreme view as regards diminution of State's rights. On June 18, 1787, he read to the convention his plan of government, Art. X. of which was as follows:

"X. All laws of the particular states contrary to the constitution or laws of the United States to be utterly void; and, the better to prevent such laws being passed, the government or president of each state shall be appointed by the general government, and shall have a negative upon the laws about to be passed in the state of which he is the governor or president." (5 Ell. Deb. 205.)

On June 19th, speaking in favor of his plan, Mr. Hamilton said:

"By an abolition of the states, he meant that no boundary could be drawn between the national and state legislatures; that the former must therefore have indefinite authority. * * * As states, he thought they ought to be abolished. But he admitted the necessity of leaving in them subordinate jurisdictions." (5 Ell. Deb. 212.)

Mr. Hamilton's proposal received no support in the convention and was opposed by Mr. King (5 Ell. Deb. 212), Col. Mason (5 Ell. Deb. 217), Dr. Johnson (5 Ell. Deb. 220) and others.

The first plan debated by the convention and representing an intermediate view as to the relation of the States to the general government was that of Mr. Randolph, proposed May 29, 1787, consisting of fifteen resolutions (5 Ell. Deb. 127). The 6th Resolution of the Randolph plan proposed to give power to Congress

"to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union, or any treaty subsisting under the authority of the Union."

Mr. Charles Pinckney favored the same plan. See art. XI. Pinckney's plan. (5 Ell. Deb. 131-132.) Likewise Mr. Madison (5 Ell. Deb. 171) favored the Randolph plan; but on a vote taken June 8th the proposition was defeated. (5 Ell. Deb. 174.) On June 13, 1787, Mr. Randolph and Mr. Madison moved the following resolution respecting a national judiciary:

"That the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, impeachments of any national officers, and *questions which involve the national peace and harmony.*" (5 Ell. Deb. 188.)

This resolution came after a defeat of the proposition to give Congress a negative over State laws, and

was the first appearance of giving the federal judiciary jurisdiction in such matters. On the same day the Committee reported a revision of the Randolph resolutions, now nineteen in number (5 Ell. Deb. 189-190), the 13th of which reads as follows:

“13. Resolved, That the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the *national peace and harmony*.”

But the 6th resolution of this report again presented a proposal to allow Congress a negative to a limited extent on State laws. On June 15th Mr. Patterson offered a set of nine resolutions (5 Ell. Deb. 191-192). On June 19th Mr. Madison favored the Committee report, rather than the Patterson plan, urging that it was necessary for Congress to have the right to negative State laws, citing instances where under the Articles of Confederation the States, disregarding its provisions, had made compacts with each other, had made treaties with the Indians, and had disregarded decrees of Congress as to boundaries. (5 Ell. Deb. 208.) This view of Mr. Madison was strongly supported by Mr. Pinckney, Mr. Wilson and others. Such conflicts between the power of the general government and the State governments, with no authority to settle those conflicts, was one of the *evils* existing under the Confederation, and the proposal to give Congress the negative and supervision or censorship over State laws was the *remedy* thus proposed. As we shall see, such power in Congress was entirely withheld, and this Court vested with necessary power and jurisdiction in that behalf. On July 16th the sixth resolution of the

Committee report came to a tie vote (5 Ell. Deb. 317). On July 17th the same question was reconsidered, and the following was said by Mr. Sherman, Mr. Martin and Gouverneur Morris respectively :

“MR. SHERMAN thought it unnecessary, as the courts of the States would not consider as valid any laws contravening the authority of the Union, and which the legislature would wish to be negated.”

“MR. L. MARTIN considered the power as improper and inadmissible. Shall all the laws of the States be sent up to the general legislature before they shall be permitted to operate?”

“MR. GOUVERNEUR MORRIS was more and more opposed to the negative. The proposal of it would disgust all the States. A law that ought to be negated will be set aside in the judiciary department, and, if that security should fail, may be repealed by a national law.” (5 Ell. Deb. 321.)

On the next vote taken the proposition failed, aye, 3; no, 7. By this vote the proposed right in Congress to supervise and negative State laws contained in the 6th resolution of the Committee report was transferred to the judicial power provided for in the 13th resolution.

It must be borne in mind that the convention was here dealing with the states as entities, as governments, and providing that where there was a conflict between the federal government on the one hand, and the State governments as such on the other, the federal judiciary should have the power to determine that conflict, not the legislative branch of the federal government.

On July 18th the method of appointing federal judges

was taken up and decided in a manner so as to make them as nearly independent of the legislative and executive branches as possible. Afterwards, on the same day, Mr. Madison moved that the 13th resolution be altered so as to read as follows :

“That the jurisdiction shall extend to all cases arising under the national laws, and to such other questions as may involve the *national peace and harmony.*” (5 Ell. Deb. 332.)

Thus by degrees the power and jurisdiction of the judiciary approached the form now contained in the Constitution.

On July 23rd and 26th a Committee on detail was appointed, after the adoption of resolutions, to prepare and report a form of Constitution (5 Ell. Deb. 374 to 376.) The sixth of those resolutions retained an element of control by Congress over State laws, but the sixteenth resolution as to the judiciary read as last proposed by Mr. Madison. On August 6th the Committee on detail reported a form of Constitution (5 Ell. Deb. 376 to 381). Art. IX. secs. 2 and 3 undertook to cover the 6th resolution, referred to the Committee on detail, giving to Congress the power to try disputed boundaries, or jurisdiction between States, also questions arising under land grants made by different States. Art. XI. sec. 3 defined the jurisdiction of the Supreme Court and was designed to embrace the 16th resolution referred to the Committee—that is to say, was intended to give the Supreme Court jurisdiction and power to decide questions which might involve the “national peace and harmony.” On August 23rd Mr.

Charles Pinckney offered an amendment by adding as a nineteenth clause to Art. 12, sec. 1, the following:

“To negative all laws passed by the several states, interfering, in the opinion of the legislature, with the general interests and harmony of the Union, provided that two-thirds of the members of each House assent to same.” (5 Ell. Deb. 468.)

In support of Mr. Pinckney's resolution, Mr. Wilson said:

“This as the key-stone wanted to complete the wide arch of government we are raising. The power of self-defence had been urged as necessary for the state governments. It was equally necessary for the general government. The firmness of judges is not, of itself, sufficient. Something further is requisite. It will be better to prevent the passage of an improper law, than to declare it void, when passed.” (5 Ell. Deb. 468.)

Mr. Rutledge said:

“If nothing else, this alone would damn, and ought to damn, the Constitution. Will any state ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them, whose by-laws would not be subject to this shackle.” (5 Ell. Deb. 468.)

Mr. Ellsworth (afterwards Chief Justice) said:

“That the power contended for would require, either that all laws of the state legislature should, previously to their taking effect, be transmitted to the general legislature, or be repealable by the latter; or that the state executives should be appointed by the general government, and have a

control over the state laws. If the last was meditated, let it be declared." (5 Ell. Deb. 468.)

On August 24th the second and third sections of art. IX. of the proposed Constitution were taken up. (5 Ell. Deb. 471.)

"MR. RUTLEDGE said, this provision for deciding controversies between the States was necessary under the Confederation, but will be rendered unnecessary by the national judiciary now to be established; and moved to strike it out."

"MR. WILSON urged the striking out, the judiciary being a better provision."

The motion of Mr. Rutledge prevailed, ay 8, no 2.

Thus finally, the proposal to give Congress a revisory power over State legislation was defeated and disappeared from the entire scheme of the Constitution. In its place the judiciary was vested with power to determine whether State laws were in conflict the "supreme law of the land," and, if so, null and void. Also to determine "such other questions as involved the national peace and harmony," including controversies "respecting jurisdiction or territory" between two or more States.

The scope of jurisdiction so defined, thus developed step by step in the convention, involved conflicts, which it was considered must inevitably arise, between federal jurisdiction and sovereignty on the one side and State jurisdiction and sovereignty on the other. Such conflicts had arisen under the Articles of Confederation, without means of solution. To the federal judiciary was committed the power and jurisdiction to settle such conflicts arising under the Constitution and

laws of the United States, whether passed "in pursuance thereof" or not.

The question of taxation was regarded by the convention as a most likely subject of conflict between federal jurisdiction and sovereignty on the one side and State jurisdiction and sovereignty on the other, and care was taken as far as possible to determine the limits of jurisdiction as between the general government and the State governments. As to imports and exports, see 5 Ell. Deb. 486.

On September 14, 1787, to

"Article 1, sect. 8, the words 'but all such duties, imposts, and excises shall be uniform throughout the United States,' were unanimously annexed to the power of taxation." (5 Ell. Deb. 543.)

Art. III, sec. 2, clause 2, of the Constitution as adopted, giving this Court original jurisdiction in all cases in which a State shall be a party, necessarily embraces such conflicts of sovereignty and jurisdiction as the convention had under consideration when repeated efforts were made to vest in Congress a supervisory power over State legislation. In the case at bar Congress undertook to censor and revise State Laws on the subject of inheritance taxes. The attempt is admittedly void, and the provisions of the Revenue Act so providing were not passed "in pursuance of" any constitutional power, and hence are not "the supreme law of the land." The proceedings in the convention creating this Court, and defining its jurisdiction and power show that it is the function of this Court to declare such provisions of the Revenue Act void when contested by a sovereign State. The 10th Amendment in express terms provides that all powers not delegated to

Congress are reserved "to the *States* respectively or to the people." If it had not been understood that a State would be a competent party in such circumstances, then the phrase "to the States respectively" was useless in that amendment.

**Constructions by State Conventions and Contemporary
Constructions Demonstrate That This Court
Should Take Jurisdiction.**

In the Massachusetts Convention the Governor of that State offered certain amendments intended to accompany ratification. Concerning these proposed amendments, Mr. Samuel Adams said in part:

"Your excellency's first proposition is, 'that it be explicitly declared, that all powers not expressly delegated to Congress are reserved to the several States, to be by them exercised.' This appears, to my mind, to be a summary of a bill of rights, which gentlemen are anxious to obtain. It removes a doubt which many have entertained respecting the matter, and gives assurance that, if any law made by the federal government shall be extended beyond the power granted by the proposed Constitution, and inconsistent with the constitution of this state, it will be an error, and adjudged by the courts of law to be void. It is consonant with the second article in the present Confederation, that each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not, by this Confederation, expressly delegated to the United States in Congress assembled. I have long considered the watchfulness of the people over the conduct of their rulers and strongest guard against the encroachments of power; and I hope the people of this country will always be thus watchful." (2 Ell. Deb. 131.)

In the New York Bar Report, page 30, Senate Document 941, quoted *supra*, it is said that this speech of Samuel Adams turned the tide in the Massachusetts Convention in favor of ratification with such proposed amendments. The amendment proposed by Massachusetts was in substance the 10th amendment to the Constitution afterwards adopted. That speech of Samuel Adams expressed the same views which he and other Massachusetts statesmen had expressed in 1765, some of which are quoted pages 10 and 11, *supra*. It is clear, therefore, that the Massachusetts understanding in ratifying the Constitution with the substance of the 10th amendment added, meant:

1. That if an Act of Congress transgressed a power reserved to a State this Court would have power to declare such act void.

2. That an Act of Congress transgressing a State's "exclusive right to make laws of our own internal government and taxation," would create such a case. (Samuel Adams' letter, November 11, 1765, quoted page 11, *supra*.)

3. That a State as such would be a competent party plaintiff to such a case.

In the North Carolina Convention, Mr. Iredell (afterwards Associate Justice of this Court) attempted, like Samuel Adams in Massachusetts, to persuade North Carolina to ratify, and trust to amendments afterwards. Among other things, he said:

"Should the government, on trial, be found to want amendments, those amendments can be made in a regular method, in a mode prescribed by the Constitution itself. Massachusetts, South Carolina, New Hampshire, and Virginia, have all proposed amendments; but they all concurred in the

necessity of an immediate adoption." (4 Ell. Deb. 130.)

"This Constitution, when adopted, will become a part of our State Constitution; and the latter must yield to the former only in those cases where power is given by it. It is not a yield to it in any other case whatever." (4 Ell. Deb. 179.)

"The powers of the government are particularly enumerated and defined; they can claim no others but such as are enumerated. In my opinion, they are excluded as much from the exercise of any other authority as they could be by the strongest negative clause that could be framed." (4 Ell. Deb. 220.)

Mr. Iredell was supported by Mr. Davie, who said in part:

"It is necessary in all governments, but particularly in a federal government, that its judiciary should be competent to the decision of all questions arising out of the Constitution." (4 Ell. Deb. 156.)

"It is certainly clear that where the peace of the Union is affected, the general judiciary ought to decide." (4 Ell. Deb. 159.)

The prevailing view in North Carolina, however, was expressed by such speeches as that of Mr. Spencer, who said in part:

"I know it is said that what is not given up to the United States will be retained by the individual states. I know it ought to be so, and should be so understood; but sir, it is not *declared* to be so. * * * I look upon it, therefore that there ought to be something to confine the power of this government within its proper boundaries." (4 Ell. Deb. 137.)

In the Virginia Convention Governor Randolph, answering the criticisms of Patrick Henry and others, speaking of the so-called "sweeping clause" of the Constitution, pointed out that the same could not be used to enlarge powers expressly given. He made the same observation as to the "general welfare clause" contained in art. I, sec 8, clause 1. After quoting the tax clause, he said:

"The plain and obvious meaning of this is, that no more duties, taxes, imposts, and excises, shall be laid, than are sufficient to pay the debts, and provide for the common defence and general welfare, of the United States." (3 Ell. Deb. 207.)

In further discussions of the same topic, he also said:

"Take it altogether, and let me ask if the plain interpretation be not this—a power to lay and collect taxes, etc., in order to provide for the general welfare and pay debts." (3 Ell. Deb. 466.)

"No man who reads it can say it is general, as the honorable gentleman represents it. You must violate every rule of construction and common sense, *if you sever it from the power of raising money*, and annex to it anything else, in order to make it that formidable power which it is represented to be." (3 Ell. Deb. 599-600.)

These interpretations define the limitation, the dividing line, between federal power and jurisdiction of taxation and state power and jurisdiction, as understood by the Virginia Convention. If Congress passes an act transgressing the limitation so defined, the power of this Court to declare such act void was thus viewed by Mr. Marshall:

“If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void.” (3 Ell. Deb. 553).

On the necessity of this Court being vested with jurisdiction in such cases, Mr. Marshall also said:

“Is it not necessary that the federal courts should have cognizance of cases arising under the Constitution, and the laws of the United States? What is the service or purpose of a judiciary, but to execute the laws in a peaceable, orderly manner, without shedding blood, or creating a contest or availing yourselves of force? If this be the case, where can its jurisdiction be more necessary than here?” (3 Ell. Deb. 554.)

With prophetic vision Mr. Marshall foresaw conflicts between federal sovereignty and state sovereignty which, but for the function and power of this Court, might lead to disunion and civil war. The Chief Justice used similar language in *McCulloch v. Maryland*, 4 Wheat., 400-1; and in, *Osborn v. Bank*, 9 Wheat. 849. When he made the speech above quoted in the Virginia Convention he exactly sensed the conflict created by the nullification acts of South Carolina, which furnished the subject of the great debate between Webster and Hayne. He conceived the possibility that Congress might undertake to do just what it has done in this case, *i. e.*, attempt the nullification of a clause in the Constitution of Florida, the nullification of a clause in the Constitution of Alabama, and a censorship over the inheritance tax laws of the several states.

For contemporary constructions we turn to the views of Mr. Hamilton and Mr. Madison, as expressed in the *Federalist*. It is remembered that in the Constitutional Convention Mr. Hamilton favored abolishing the States and the appointment of Governors by the Washington government, but after he had been completely overruled in the convention he was still desirous that his country should have a more perfect Union, for which there was such a very great need, and hence while the State Conventions were considering the proposed Constitution he turned his great talents towards giving his countrymen a proper construction of the Constitution as adopted by the Convention.

In the *Federalist*, No. 28, Lodge ed. pp. 166-7, Mr. Hamilton said:

“It may safely be received as an axiom in our political system, that the State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority. Projects of usurpation cannot be masked under pretences so likely to escape the penetration of select bodies of men, as of the people at large. The legislatures will have better means of information. They can discover the danger at a distance; and possessing all the organs of civil power, and the confidence of the people, they can at once adopt a regular plan of opposition, in which they can combine all the resources of the community. They can readily communicate with each other in the different states, and unite their common forces for the protection of their common liberty.”

This sounds like the speeches and writings of Samuel Adams in 1765, some of which have heretofore been quoted. He makes it clear that when there is “usurpa-

tion" by "national authority" it is the business of the *State or States* to complain. That is what Florida is seeking here to do by her bill.

On the particular subject of taxation, Mr. Hamilton, Federalist No. 32, Lodge ed. 1. 185, said:

"I am willing here to allow, in its full extent, the justness of the reasoning which requires that the individual States should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants. And making this concession, I affirm that (with the sole exception of duties on imports and exports) they would, under the plan of the convention, retain that authority in the most absolute and unqualified sense; and that an attempt on the part of the national government to abridge them in the exercise of it, would be a violent assumption of power, unwarranted by any article or clause of its Constitution."

What Florida complains of here is an attempt by Congress "to abridge" her "independent and uncontrollable authority to raise her own revenues for the supply of her own wants." This, says Mr. Hamilton, is a "violent assumption of power." In the case at bar the "usurpation" was accomplished by the 80% credit provision of sub-section B of section 301 of the Revenue Act of 1926.

On the same subject, Mr. Hamilton, Federalist No. 33, Lodge ed. p. 192, and pp. 193 and 194 said:

"Suppose, again, that under the pretence of an interference with its revenues, it should undertake to abrogate a land-tax imposed by the authority of a State; would it not be equally evident that this was an invasion of that concurrent jurisdiction in

respect to this species of tax, which its Constitution plainly supposes to exist in the State governments? If there ever should be a doubt on this head, the credit of it will be entirely due to those reasoners who, in the imprudent zeal of their animosity to the plan of the convention, have labored to envelop it in a cloud calculated to obscure the plainest and simplest truths. * * * * * It will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will be deserved to be treated as such. Hence we perceive that the clause which declares the supremacy of the laws of the Union, like the one we have just before considered, only declares a truth, which flows immediately and necessarily from the institution of a federal government. It will not, I presume, have escaped observation, that it *expressly* confines this supremacy to laws made *pursuant to the Constitution*; which I mention merely as an instance of caution in the convention; since that limitation would have been to be understood, though it had not been expressed.

Though a law, therefore, laying a tax for the use of the United States, would be supreme in its nature, and could not legally be opposed or controlled, yet a law for abrogating or preventing the collection of a tax laid by the authority of the State (unless upon imports and exports), would not be the supreme law of the land, but a usurpation of power not granted by the Constitution. * * * * * The inference from the whole is, that the individual States would, under the proposed Constitution, retain an independent and uncontrollable authority to raise revenue to any extent of which they may stand in need, by every kind of taxation, except duties on imports and exports."

There is no difference in principle between the exclusive control by a State of its own "land-tax" and its exclusive control of its own "inheritance tax." Tested by Mr. Hamilton's logic, Title III of the Revenue Act of 1926 is nothing short of a violent usurpation, and that the State, acting through its legislature, or its Chief Executive (as in this case) can at once "adopt a regular plan of opposition." (The Federalist, Lodge ed. p. 167).

One "plan" which the Constitution contemplates is the institution by a State of just such a suit as the one now presented to this Court. Another plan left open by the Constitution, pursuant to the first amendment, is a State legislative memorial to Congress protesting and petitioning repeal of the obnoxious law. Such was the character of the Virginia and Kentucky resolutions of 1798 protesting against the alien and sedition laws.

As to the function of the judiciary, Mr. Hamilton, in The Federalist No. 78, Lodge ed. pp. 484-485, said:

"The complete independence of the courts of justice is peculiarly essential in a limited Constitution. * * * Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing. * * * There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm, that the deputy is greater than

his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions of the Constitution. * * * It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law."

In the Federalist No. 80, Mr. Hamilton takes up and justifies each phase of jurisdiction vested in the federal judiciary. Among other things, Lodge ed. pp. 495, 496 and 497, he says:

"The mere necessity of uniformity in the interpretation of the national laws, decides the question. * * * The power of determining causes between two States, between one State and the citizen of another, and between the citizens of different states, is perhaps not less essential to the peace of the Union than that which has been just examined. * * * Whatever practices may have a tendency to disturb the harmony between the States, are proper objects of federal superintendence and control."

In the Federalist No. 44, Lodge ed. p. 283, Mr. Madison said¹:

“In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people, who can, by the election of more faithful representatives, annul the acts of the usurpers.”

In the Federalist, No. 39, Lodge ed. pp. 232, et seq., Mr. Madison sets forth the nature of the federal union—federal in part and national in part. At pages 238-9, he said:

“But if the government be national with regard to the *operation* of its powers, it changes its aspect again when we contemplate it in relation to the *extent* of its powers. * * * In this relation, then, the proposed government cannot be deemed a *national* one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. *It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government.* But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. *Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact;* and that it ought to be established under the general rather than under the local government, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated.”

Mr. Hamilton, as we have seen, defined the boundary line in matters of taxation between the two sovereignties. When there is usurpation, as defined by Mr. Hamilton, a controversy may arise, as in the case at bar "relating to the boundary" so defined. Says Mr. Madison, this Court is the tribunal created by the Constitution to decide such a controversy, and Mr. Madison agrees with Mr. Marshall's views above quoted (3 Ell. Deb. 554) as to the necessity for the existence and exercise by this court of such judicial function.

From these interpretations by those who framed and ratified the Constitution, the following conclusions are irresistible:

1. That the bill in this case, complaining of an invasion by act of Congress of the jurisdiction and sovereignty of the State of Florida, presents a justiciable controversy.

2. That the State of Florida is a proper party plaintiff in that behalf.

3. That this Court was constituted for the express purpose, among others, of entertaining and deciding the merits of such a controversy.

In this day of isms and so-called social and economic reforms, the Congress when enacting Title III of the Revenue Act of 1926, disregarded the chart and compass of the Constitution as written and as understood by its framers.

Guided by Samuel Adams, Marshall, Madison, Hamilton, and others quoted, we submit that no higher duty devolves upon this Court than an exercise of jurisdiction in this case.

Nullification Acts of South Carolina.

In May, 1828, South Carolina passed an Act attempting to nullify the federal tariff, and prevent its enforcement and operation in the State of South Carolina. Another Act of the same purport was passed in 1832, and then a State Convention was assembled which passed an ordinance declaring the tariff null and void, forbidding the Courts and constituted authorities of the State giving any effect thereto, and declaring that the people of South Carolina would maintain said ordinance at every hazard. See proclamation of President Jackson, November, 1832, 4 Ell. Deb. 582, et seq.

By these acts and proceedings the sovereignty of the State of South Carolina was put into direct conflict with the sovereignty of the federal government. This was State action of an extreme degree, attempting wholesale interference with the collection of federal revenue. When the Solicitor General insisted that Florida's suit is a "startling innovation" he evidently overlooked this precedent of nearly 100 years standing. It so happens that the controversy arose over the power of Congress "to lay and collect * * * imposts," whereas here the controversy arises over the power of Congress "to lay and collect * * * excises," found in the same clause of the Constitution. South Carolina was wrong both on the question of the Constitutionality of the tariff, and also as to the method of State opposition. Nevertheless the conflict was a concrete example of what Mr. Madison foresaw when he wrote *The Federalist*, No. 39, above quoted.

Webster vs. Hayne.

The action of South Carolina was the subject of the great debate between Webster and Hayne in the United States Senate in January, 1830 (4 Ell. Deb. 496 to 519). Mr. Hayne maintained that the tariff law was unconstitutional; that the nature of the Union was a compact of the States, to which the general government was a party; that since the general government, as one of the parties had violated the compact, the State as another party was released; that this Court had no jurisdiction to determine the controversy, and that it was competent for the State to be its own judge in the matter. Mr. Webster attacked these propositions with all his forensic power. As appears 4 Ell. Deb. pp. 498, 499, 500, 501, 505, 506, 507 and 508, Mr. Webster said in part:

“It is no doctrine of mine, that unconstitutional laws bind the people. The great question is, Whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws? On that the main debate hinges.

* * * * *

The general government and the state governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The national government possesses those powers which it can be shown the people have conferred on it, and no more.

* * * * *

In Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania, it

is both clearly constitutional and highly expedient ; and there the duties are to be paid. And yet we live under a government of uniform laws, and under a Constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all the States! Does not this approach absurdity?

* * * * *

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? Are we not thrown again, precisely, upon the old Confederation?

* * * * *

An unconstitutional law is not binding; but, then, it does not rest with a resolution, or a law of a state legislature, to decide whether an Act of Congress be, or be not, constitutional. An Unconstitutional act of congress would not bind the people of this district, although they have no legislature to interfere in their behalf.

* * * * *

Let me here say, sir, that if the gentleman's doctrine had been received and acted upon in New England, in the times of the embargo and non-intercourse, we should probably now not have been here.

* * * * *

Sir, I deny the whole doctrine. It has not a foot of ground in the Constitution to stand on.

* * * * *

It (the Union) is created for one purpose, the state governments for another. It has its own powers, they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a Constitution emanating immediately from the

people, and trusted by them to our administration.

* * * * *

But who shall decide on the question of interference? To whom lies the last appeal? This, sir, the Constitution itself decides, also, by declaring, 'that the judicial power shall extend to all cases arising under the Constitution and laws of the United States.' These two provisions, sir, cover the whole ground. They are, in truth, the keystone of the arch. With these, it is a constitution; without them it is a confederacy. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, sir, became a Government. It then had the means of self-protection; and, but for this, it would in all probability, have been now among things which are past.

* * * * *

Instead of *one tribunal, established by all, responsible to all, with power to decide for all*—shall constitutional questions be left to four and twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of the others; and each at liberty, too, to give a new construction on every new election of its own members? Would anything, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, sir, it should not be denominated a constitution. It should be called, rather, a collection of topics for everlasting controversy—heads of debate for a disputatious people. It would not be a government. It would not be adequate to any practical good, nor fit for any country to live under. To avoid all possibility of being misunderstood, allow

me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit that it is a government of strictly limited powers,—of enumerated, specified, and particularized powers,—and that whatsoever is not granted is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limits and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing—*it would be incapable of long existing—if some mode had not been provided, in which these doubts, as they should arise, might be peaceably, but authoritatively, solved.*

* * * * *

Sir, the people * * * have reposed trust in the judicial power, which, in order that it might be trustworthy, they have made as respectable, as disinterested, and as independent, as was practicable.”

Florida contends that the Estate Tax, Title III, with the 80% credit provision is unconstitutional, and the briefs heretofore filed in this case amply sustain that contention. Congress has usurped the sovereign functions of the State and has attempted to nullify its late constitutional amendment. A conflict of sovereignty has arisen. Florida does not seek relief by state legislative nullification. On the contrary, she is pursuing the constitutional course advocated by Mr. Webster. The question is, *shall Florida be turned out of Court without a hearing?* Is it possible that the Solicitor General would require that the Florida Legislature pass a nullification act before he would concede that this is a matter of *State concern*, and not a case of *parens patriae*?

Virginia and Kentucky Resolutions.

In the course of the debate Mr. Hayne relied upon and quoted at length from the Virginia and Kentucky Resolutions of 1798, protesting against the alien and sedition laws; also from Mr. Madison's report in support of the Virginia Resolutions. See Kentucky Resolutions, 4 Ell. Deb. 540, Virginia Resolutions, 4 Ell. Deb. 456. In the first place, those resolutions were mere protests and petitions to Congress for relief against an obnoxious law, fully justified by the first amendment to the Constitution. In the second place, Mr. Madison, in his report (4 Ell. Deb. 578) took pains to point out that the method of opposition so adopted did not in any sense undertake to supersede the federal judiciary in its functions and power to declare the meaning of the federal constitution; that the right of the State to petition Congress, or to confer with other States relative to an obnoxious law existed whether before or after judicial decision with respect thereto. Said he:

“The declaration in such cases are expressions of opinion, unaccompanied with any other effect than what they may produce on opinion, by exciting reflection.”

Moreover, the Virginia Resolutions (4 Ell. Deb. 580) concluded as follows:

“and more especially to be their duty to renew, as they do hereby renew, their *Protest* against Alien and Sedition Acts, as palpable and alarming infractions of the Constitution.”

Concerning these Resolutions, Mr. Webster in his speech above referred to, said:

"Their language is not a little indefinite. In the case of the exercise by Congress, of a dangerous power, not granted to them, the resolutions assert the right, on the part of the state, to interfere and arrest the progress of evil. This is susceptible of more than one interpretation. It may mean no more than the States may interfere by complaint and remonstrance; or by proposing to the people an alteration of the Federal Constitution. This would be all quite unobjectionable; or it may be that no more is meant than to assert the general rights of revolution, as against all governments, in cases of intolerable oppression." (4 Ell. Deb. 505.)

Madison's Letters Refute the, Nullification Doctrine, and Assert the Jurisdiction of this Court as the Remedy.

At the time of the debate between Webster and Hayne, Mr. Madison, born in 1751, had retired to private life. He was much exercised when this controversy threatened the Union and the "peace and harmony" of the Nation—particularly so, as his writings were being quoted in support of such a doctrine. It is observed in Charles Warren's *The Supreme Court*, vol. 1, p. 260, that

"Mr. Madison clearly pointed out in numerous letters that they (the Virginia Resolutions) did not constitute or imply any denial of the supremacy of the judiciary."

And in the notes many such letters are cited. On May 27, 1830, Mr. Madison wrote Mr. Webster in substance acknowledging receipt of copy of his speech, and stating that he, Mr. Madison, had a full sense of its powerful bearing on the subjects discussed—particularly

its overwhelming effect on the nullification doctrine of South Carolina, and stating that he had previously communicated his views to Mr. Everett. On April 2, 1830, Mr. Madison wrote to Mr. Edward Everett, thanking him for copy of Mr. Webster's and Mr. Sprague's speeches. Apparently Mr. Madison's first reply to Mr. Hayne's contentions was contained in his letter to Nicholas P. Trist, dated February 15, 1830, found in *Letters and Other Writings of James Madison—Published by Order of Congress, 1865, vol. 4, pp. 62-63*, in which letter Mr. Madison said in part:

“In forming this compound scheme of government, it was impossible to lose sight of the question, What was to be done in the event of controversies, which could not fail to occur, concerning the *partition line* between the powers belonging to the Federal and to the State Governments? That some provision ought to be made, was as obvious and as essential as the task itself was difficult and delicate.

“That the final decision of such controversies, if left to each of the thirteen, now twenty-four, members of the Union, must produce a different Constitution and different laws in the States, was certain; and that such differences must be destructive of the Common Government and of the Union itself, was equally certain. The decision of questions between the common agents of the whole and of the parts could only proceed from the whole—that is, from a collective, not a separate, authority of the parts.

“The question then presenting itself could only relate to the least objectionable mode of providing for such occurrences under the collective authority.

“The provision immediately and ordinarily re-

lied on is manifestly the Supreme Court of the United States, clothed as it is with a jurisdiction 'in controversies to which the United States shall be a party,' the court itself being so constituted as to render it independent and impartial in its decisions (see Federalist, No. XXXIX, p. 241), while other and ulterior resorts would remain, in the elective process, in the hands of the people themselves, the joint constituents of the parties, and in the provision made by the Constitution for amending itself. All other resorts are extra and ultra constitutional, corresponding with the ultima ratio of nations renouncing the ordinary relations of peace.

"If the Supreme Court of the United States be found or deemed not sufficiently independent and impartial for the trust committed to it, a better tribunal is a desideratum. But, whatever this may be, it must necessarily derive its authority from the whole, not from the parts; from the States in some collective, not individual capacity. And as some such tribunal is a vital element, a sine qua non, in an efficient and permanent Government, the tribunal existing must be acquiesced in until a better or more satisfactory one can be substituted." (Italics ours.)

On April 3/4, 1830, Mr. Madison addressed a letter to Senator Robert Y. Hayne expressing the same views. In that letter Mr. Madison refutes the doctrine of nullification because of the manner in which the Union was formed and the Constitution adopted. He then continues:

"If we advert to the Govt. of the U. S. as created by the Constitution it is found also to be a Govt. in as strict a sense of the term, within the sphere of its powers, as the Govts. created by the

Constitutions of the States are within their respective spheres.

“Between these two Constitutional Govts., the one operating in all the States, the others operating in each respectively; with the aggregate powers of Govt. divided between them, *it could not escape attention, that controversies concerning the boundary of Jurisdiction would arise, and that without some adequate provision for deciding them, conflicts of physical force might ensue.* A political system that does not provide for a peaceable & authoritative termination of occurring controversies, can be but the name & shadow of a Govt. the very object and end of a real Govt. being the substitution of law & order for uncertainty confusion & violence.

“That a final decision of such controversies, if left to each of 13 States now 24 with a prospective increase, would make the Constitution & laws of the U. S. different in different States, was obvious; and equally obvious that this diversity of independent decisions must disorganize the Government of the Union, and even decompose the Union itself.

“*Against such fatal consequences* the Constitution undertakes to guard.

1. By declaring that the Constitution & laws of the States in their united capacity shall have effect, anything in the Constitution or laws of any State in its individual capacity to the contrary notwithstanding, by *giving to the Judicial authority of the U. S. an appellate supremacy in all cases arising under the Constitution; & within the course of its functions, arrangements supposed to be justified by the necessity of the case; and by the agency of the people & Legislatures of the States in electing & appointing the Functionaries of the Common Govt. whilst no corresponding relation existed between the latter and the Functionaries of the States.*” (Italics ours.)

Concluding, he further points out other remedies, *i.e.*, constitutional amendment, impeachment, and finally, as the "ultima ratio," the right of revolution against unbearable oppression. This letter is found in *The Writings of James Madison*, Hunt. ed. vol IX, pp. 383-7; also in a work by James Brown Scott, entitled *The United States; A Study in International Organization*, pp. 335 to 337. In this work Mr. Scott, page 335, credits Mr. Madison as being the best informed man in the Constitutional Convention. Mr. Madison was the last surviving signer of the federal constitution. When he wrote the letters above quoted he was perhaps the greatest living authority on that instrument. His letters were addressed to the specific case of a conflict between a State sovereignty and the federal sovereignty on the subject of taxation. His expositions of the functions of this Court are the same in substance as given by him in *The Federalist*, No. XXXIX above quoted, and those expositions mean that Florida's bill is aptly brought and should be entertained by this Court. By Title III of the Revenue Act of 1926, with its 80% credit provision, Congress has crossed the boundary line defined by Mr. Madison and by Mr. Hamilton, and the State's appeal to this Court is the constitutional remedy.

The invasion of the State's jurisdiction and sovereignty would not be more pronounced if, without the consent of Florida and Alabama, Congress had passed an Act undertaking to make that part of Florida lying west of the Chattahoochee River a part of the State of Alabama.

Decisions Involving Boundary Lines of Sovereignty.

As we have seen, Mr. Hamilton in *The Federalist*, Nos. 28, 32 and 33, clearly pointed out the line, the limitation, of federal sovereignty and power to levy taxes, exclusive and superior to its own sphere, while on the other side of the line, State sovereignty and power in matters of state taxation are equally supreme. This was the general doctrine laid down in *McCulloch vs. Maryland* and in *Collector vs. Day*, as to which there is now no dispute.

“There is nothing in the Constitution (of the United States) which can be made to admit of any interference by Congress with the secure existence of any State authority within its lawful bounds. And any such interference by the indirect means of taxation is quite as much beyond the power of the national legislature as if the interference were direct and extreme.”

Fifield v. Close, 15 Mich. 505;

Cooley's Constitutional Limitations, 7th ed. p. 684;

Ward v. Maryland, 12 Wall. 418, 427.

We have also seen from Mr. Madison, *Federalist* No. XXXIX, and from Mr. Madison's letters in February and April, 1830, that the framers of the Constitution contemplated that conflicts would arise over the “boundary” between the sovereignty of the general government, and the sovereignty of the State governments, and that this tribunal was constituted expressly to settle such conflicts peaceably and without appeal to the sword.

This suit does not concern a physical boundary, marked by monuments between two States, and involv-

ing a conflict of sovereignties in the disputed territory. But it is a suit involving a conflict as to the invisible boundary defined by the Constitution, and now clearly understood, between federal sovereignty and State sovereignty as to a matter of taxation, and, therefore, we think cases of disputed state boundary lines will be found instructive.

Rhode Island v. Massachusetts, 12 Peters, 757,
Decided in 1838.

In this case Mr. Webster represented the defendant, Massachusetts. He insisted that the issue was political because neither state claimed any proprietary right or title to any part of the disputed territory, and that, therefore, this Court had no jurisdiction to entertain the bill filed by Rhode Island. Mr. Hazard, representing Rhode Island, of course, knew of the famous debate between Mr. Webster and Mr. Hayne, and in the course of his argument (12 Pet. 709), he made this retort to Mr. Webster's argument :

"I could not help feeling great surprise, when I heard the attorney general of Massachusetts so solemnly and potently warning this Court of consequences, and expressing his anxious hopes, that if it should decide against Massachusetts, it will, for the honor of the Court, and for the honour of the country, be sure to find some way to execute its decree. What! Does Massachusetts threaten? Is Massachusetts ready to become a nullifying state? and to set up her own will, in defiance of the decrees of this court, and of the constitution itself?"

Counsel for Rhode Island met the issue of sovereignty face to face. At 12 Pet. 710, he said :

“This controversy is about state jurisdiction, not titles to soil and freehold. I suspect, however, that if those inhabitants were consulted, they would not consent to be made defendants; but would rather join with the complainant state. They are taxed hard in Massachusetts, and would have no state taxes to pay in Rhode Island.”

Concluding his argument (12 Pet. 714) he said:

“What then does Massachusetts mean? Does she mean, that in her controversies with any of her sister states, she is not amenable to justice, before any tribunal?—And that there is no remedy for an injured state, for any wrongs she may suffer at her hands? That there shall be no wrong without a remedy, is a first principle, an axiom in all free governments. Is this the country in which that great fundamental principle of right and justice is to be first abandoned?”

The Court, therefore, had ringing in its ears the late nullification controversy which engaged the attention of the United States Senate, and the strong hand of President Jackson. Such a back-ground fully justified the exhaustive opinion of the Court delivered by Mr. Justice Baldwin. At page 723 of the text, the Court said:

“All controversies of a civil nature, where a state is a party, are broad comprehensive terms; by no obvious meaning or necessary implication, excluding those which relate to the title, boundary, *jurisdiction* or *sovereignty* of a state. 6 Wheat. 378.

* * * * *

“We must presume that Congress did not mean to exclude from our jurisdiction those controver-

sies, the decision of which the states had confided to the judicial power, and are bound to give to the constitution and laws such a meaning as will make them harmonize, unless there is an apparent or fairly to be implied conflict between their respective provisions."

At page 726, the Court said:

"Bound hand and foot by the prohibitions of the constitution, a complaining state can neither treat, agree, or fight with its adversary, without the consent of congress; a resort to the judicial power is the only means left for legally adjusting or persuading a state which has possession of disputed territory, to enter into an agreement or compact, relating to a controverted boundary."

So here, the State is bound hand and foot while federal officers execute the Act of Congress. A resort to this Court is the State's only recourse. At page 727, the Court points out that the boundaries of States had been settled in suits between private parties, and that there was no just reason why the Court could not settle a state boundary dispute at the suit of one of the states involved. At page 732, the Court notes the prayers of the bill:

1. That the Court determine the true boundary.
2. "That the right of jurisdiction and sovereignty of the plaintiff to the disputed territory may be restored to her, and she be quieted in the enjoyment thereof, and her title thereto."

At page 733, the Court said:

"What then is the extent of jurisdiction which a state possesses? We answer, without hesitation,

the jurisdiction of a state is coextensive with its territory, coextensive with its legislative power.

* * * * *

“Title, jurisdiction, sovereignty, are therefore dependent questions, necessarily settled when boundary is ascertained, which being the line of territory, is the line of power over it.”

From this language we get this indisputable proposition: that the sovereignty of a State is coextensive with its legislative power. When an Act of Congress, without warrant under the Constitution, usurps the legislative power of the State the boundary of its sovereignty is invaded, giving rise to a right of action in this Court. At page 737 Mr. Justice BALDWIN pointed out that prior to the Constitution and prior to the Articles of Confederation a boundary dispute was a political question, but that since the Constitution such question had been made justiciable, including controversies concerning “boundary jurisdiction or any other cause whatsoever.” The same subject was further discussed text 743. At page 744, the Court said:

“In 1799, it was laid down, that though *a state could not sue at law for an incorporeal right, as that of sovereignty and jurisdiction; there was no reason why a remedy could not be had in equity.* That one state may file a bill against another, to be quieted as to the boundaries of disputed territory, and this Court might appoint Commissioners to ascertain and report them; since *it is monstrous to talk of existing rights without corresponding remedies.* 3 Dall. 413.” (Italics ours)

On the same page the Court quotes *Cohens v. Virginia* for the proposition that when a State is a party

“it is entirely unimportant what may be the subject of the controversy.”

According to the definitions of Mr. Hamilton and of Mr. Madison, the sovereignty and jurisdiction of Florida is involved here—its legislative power abridged, no less than Rhode Island complained of against Massachusetts. This Court, sitting as a court of equity, has power and jurisdiction to protect Florida’s “incorporeal right * * * of sovereignty and jurisdiction.” Must she await the hazard and slow process of a suit by a private party? “It is monstrous” to concede her right and deny the remedy. Upon these premises Mr. Justice BALDWIN sustained the contentions of Rhode Island.

Mr. Chief Justice TAXEY dissented, agreeing with Mr. Webster that the question was political because neither State claimed any title or proprietary interest in the disputed territory, and that the Court had no jurisdiction.

The motion of Mr. Webster to dismiss the bill was denied. (12 Pet. 754.)

Florida vs. Georgia, 17 How. 478. (1854)

This was Florida’s bill against Georgia, involving a triangular piece of territory, having its apex at the junction of the Flint and Chattahoochee Rivers, and its base at the head of the St. Marys River. Neither Florida nor Georgia claimed any proprietary interest in the disputed territory. The United States by virtue of the treaty with Spain was the largest proprietor, and if Georgia won the United States would be further involved to the extent of moneys received for lands sold. On account of these interests of the United States, the Solicitor General “in his proper person”

moved for "leave to intervene on behalf of the United States." The opinion of the Court and the dissenting opinions were addressed to that motion. Mr. Chief Justice TANEY delivered the opinion of the Court and clearly abandoned his dissent in *Rhode Island v. Massachusetts*. At text 491, he said:

"The constitution confers on this court original jurisdiction in all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party. And it is settled, by repeated decisions, that a question of boundary between States is within the jurisdiction thus conferred."

At text 494, he said:

"It would hardly become this tribunal, intrusted with jurisdiction where sovereignties are concerned, and with power to prescribe its own mode of proceedings, to do injustice rather than depart from English precedents."

His conclusion was that it was proper to grant the motion of the Solicitor General. Four Justices, including Mr. Justice CURTIS and Mr. Justice CAMPBELL, dissented on the ground that to permit the Solicitor General to intervene would in substance violate the 11th Amendment, but they all agreed with the Chief Justice as to the jurisdiction of the Court over the controversy as between the two States. At pages 510 and 511 of the text, Mr. Justice CURTIS said:

"It is true, that what Florida seeks is the protection of its rightful jurisdiction as a sovereign state; and what the United States desires is the protection of its title as a land holder, and as the grantor of lands now held by their grantees. But

both the political jurisdiction of Florida, and the title of the United States to land acquired from Spain, being coextensive with the territory of Florida, these two parties have a common interest in the subject-matter of this suit; and Florida is, in the contemplation of a court of equity, competent to represent the interest of the United States, as an owner of land.

* * * * *

“Florida is a sovereign State, whose suit must be conducted according to the will of its legislature. There is no room for any suspicion of any unworthy motives or conduct in its management. It is a high duty of that State, which it owes to itself, and which will doubtless be discharged to vindicate its jurisdictional rights, and make good its claim to all the territory which comes within its true limits. Though the question is merely where a line should run, that line carries with it the sovereignty and territorial jurisdiction of States.”

This was an adherence to the same doctrine laid down in *Rhode Island vs. Massachusetts*. The language,

“It is a high duty of that State, which it owes to itself * * * to vindicate its jurisdictional rights,”

is a clear answer to the Solicitor General's contention that in this suit the State shows no sufficient interest in itself to maintain its bill. At text 522, Mr. Justice CAMPBELL said:

“The government of Florida involved in this suit her highest claims—those of sovereignty and jurisdiction—and fulfil their chief political obligations in its prosecution. If individual claims are affected by the decree in such a suit, it is because they are so incorporated in the rights of their sovereign as to have no separate or independent ex-

istence. She is the representative of all the proprietary rights and interests of her people in their contest with another sovereign. The United States, in resigning their sovereignty over the territory of Florida to the people, and by recognizing their government, relinquished their authority over this controversy, and consented that their proprietary claims to the waste and unappropriated lands should abide the issue to which the State, in her wisdom and fidelity, should attain."

The only point of difference on this, taken by the Chief Justice, was that it was fit and proper to allow the Solicitor General to intervene and attend the proceedings whereby the interests of the United States would be affected. As to the right and duty of Florida to sue in this Court for the protection of her sovereignty and jurisdiction, there was no difference of opinion.

Virginia vs. West Virginia, 11 Wall. 39, decided in 1870.

In this case the Court, speaking through Mr. Justice MILLER, reviewed prior state boundary cases, pointing out that in *Florida vs. Georgia* Mr. Chief Justice TANEY abandoned his dissent in *Rhode Island vs. Massachusetts*, and that in *Alabama vs. Georgia* all the judges concurred. Since that time this Court has exercised jurisdiction in such cases without question.

United States vs. Texas, 143 U. S. 621, decided 1892.

This was an original bill filed in this Court by the United States against the State of Texas, to determine the boundary line between the State of Texas and the

Territory of Oklahoma. It was contended by the State of Texas that the controversy was political and not subject to judicial determination by this Court, and that it was incompetent for the general government to sue a sovereign State. In the course of the Court's opinion, speaking through Mr. Justice HARLAN, text 644-645, it was said:

“They (framers of the Constitution) could not have overlooked the possibility that controversies, capable of judicial solution, might arise between the United States and some of the States, and that the permanence of the Union might be endangered if to some tribunal was not entrusted the power to determine them according to the recognized principles of law. And to what tribunal could a trust so momentous be more appropriately committed than to that which the people of the United States, in order to form a more perfect Union, establish justice, and insure domestic tranquillity, have constituted with authority to speak for all the people and all the States, upon questions before it to which the judicial power of the nation extends? It would be difficult to suggest any reason why this court should have jurisdiction to determine questions of boundary between two or more States, but not jurisdiction of controversies of like character between the United States and a State.”

Upon this reasoning the jurisdiction of the Court was sustained. The Court holding, moreover, that the question was justiciable to the same extent as the controversy involved in the case of Rhode Island vs. Massachusetts. At page 647 of the text the Court quoted the same paragraph from the decision of Mr. Justice WASHINGTON, which was quoted by Mr. Justice BALDWIN in the Rhode Island case, 12 Pet. 744, to the effect

that this Court, sitting as a court of equity, has jurisdiction to entertain a suit by a State or by the United States to protect its incorporeal right of sovereignty and jurisdiction. Thus, for more than 100 years that proposition has been accepted without question.

According to the decision of this Court in *Minnesota v. Hitchcock*, 185 U. S. 737,

the United States is in substance the real party defendant in the case at bar, for the reason that the officers named as defendants have no personal interest in the controversy. The Minnesota case was an original proceeding by the State of Minnesota in this Court to determine the title to certain lands claimed by the State as school lands. In sustaining the jurisdiction of the Court to determine that matter the case of *United States v. Texas* was quoted at length.

The bill which Florida presents involves a controversy over the boundary line between the sovereignty and jurisdiction of the State on the one side, and the sovereignty and jurisdiction of the United States on the other. The United States is in substance the party defendant. Under the Constitution there is no other tribunal than this Court which can determine such controversy. The principles enunciated in the boundary line cases above quoted leave no room for doubt on this proposition.

State's Sovereignty Entitled to Protection.

Ableman v. Booth, 21 How. 506, decided in 1858.

This case involved a *habeas corpus* proceeding, which brought into conflict the power of the federal court and the power of the State court, and neces-

sarily, a conflict between the sovereignty of the State and the sovereignty of the federal government. Mr. Chief Justice TAXEY, delivering the opinion of the Court, pointed out clearly the boundary line between the two sovereignties, and the supremacy of each in its own sphere. He pointed out the necessity of jurisdiction being vested in this Court to determine and settle such conflict without force of arms. At page 519 of the text, he said:

“As the Courts of a State, and the Courts of the United States, might, and indeed certainly would, often differ as to the extent of the powers conferred by the General Government, it was manifest that serious controversies would arise between the authorities of the United States and of the States, which must be settled by force of arms, unless some tribunal was created to decide between them finally and without appeal.”

This is almost the language of Mr. Marshall used in the Virginia Convention (3 Ell. Deb. 554). Continuing, pp. 520-521 of the text, the Chief Justice said:

“The judicial power covers every legislative act of Congress, whether it be made within the limits of its delegated powers, or be an assumption of power beyond the grants in the Constitution.

“This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, but also to guard the *States* from any encroachment upon their reserved rights by the General Government.

* * * * *

“So long, therefore, as this Constitution shall endure, this tribunal must exist with it, deciding in the peaceful forms of judicial proceeding the angry and irritating controversies between sov-

ereignities, which in other countries have been determined by the arbitration of force."

This is the logic of Mr. Madison used in *The Federalist*, XXXIX.

Gordon vs. United States, 117 U. S. 696, written 1864.

This opinion was written by Mr. Chief Justice TANEY during the summer of 1864, and would doubtless have been delivered as the opinion of the Court had he not died before the Court convened. The opinion was lost and was not found until some twenty years afterwards. In the case of *in re Sanborn*, 148 U. S. text 224, his opinion is cited by the Court with approval. He denied the power of Congress to give this Court appellate jurisdiction to review a decision of the Court of Claims, as then constituted, and in reaching that conclusion he had occasion to consider the scope and power of this Court's original jurisdiction as defined by the Constitution. In 117 U. S. 700-701, the learned Chief Justice pointed out that the power and independence of this Court is greater than the highest judicial power in England. He then said:

"The reason for giving such unusual power to a judicial tribunal is obvious. It was necessary to give it from the complex character of the Government of the United States, which is in part National and in part Federal: *where two separate governments exercise certain powers of sovereignty over the same territory, each independent of the other within its appropriate sphere of action, and where there was, therefore, an abos-*

lute necessity, in order to preserve internal tranquillity, that there should be some tribunal to decide between the Government of the United States and the Government of a State, whenever any controversy should arise as to their relative and respective powers in the common territory. The Supreme Court was created for that purpose, and to insure its impartiality it was absolutely necessary to make it independent of the legislative power, and the influence direct or indirect of Congress and the Executive. Hence the care with which its jurisdiction, powers and duties are defined in the Constitution, and its independence of the legislative branch of the government secured." (Italics ours.)

He thus restated the great fundamental reasons why this Court has jurisdiction, and should exercise the same in the case at bar, repeating in substance what Mr. Marshall said in the Virginia Convention (3 Ell. Deb. 554), quoted page 29 *supra*, repeating in substance what Mr. Madison said in the 39th Federalist, and repeating in substance what Mr. Madison wrote to Senator Hayne, quoted pages 45 and 46, *supra*. On the same page of his opinion he quoted the same paragraph from the 39th Federalist which we have heretofore quoted page 35 *supra*, and then added:

"It was to prevent an appeal to the sword and a dissolution of the compact that this Court, by the organic law, was made equal in origin and equal in title to the legislative and executive branches of the government."

At page 705 same volume, he said:

"The Constitution of the United States delegates no judicial power to Congress. Its powers

are confined to legislative duties, and restricted within certain prescribed limits.

“By the Xth amendment the powers not delegated to the United States nor prohibited by it to the States, are reserved to the States respectively or to the people. The reservation to the States respectively can only mean the reservation of the rights of sovereignty which they respectively possessed before the adoption of the Constitution of the United States, and which they had not parted from by that instrument. And any legislation of Congress beyond the limits of the power delegated, would be trespassing upon the rights of the States or the people, and would not be the supreme law of the land, but null and void; and it would be the duty of the courts to declare it so. For whether an act of Congress is within the limits of its delegated powers or not is a *judicial* question, to be decided by the Courts, the Constitution having, in express terms, declared that the judicial power shall extend to all cases arising under the Constitution.”

Without more, this opinion squarely sustains the proposition that Florida's Bill presents a justiciable controversy, and that this Court has jurisdiction in the premises.

That opinion was written while this Country was torn in civil strife over a constitutional question. One result of the conflict was the amendment of the Constitution by adding the 13th and 14th amendments. Had the constitutional methods of opposition pointed out by the Chief Justice been pursued by the seceding States through appeal to this Court the great conflict of arms might have been averted.

In Mr. James Brown Scott's Work, *The United States—A Study in International Organization*, pp.

358-9, also in chapter 18, title "Powers of the Supreme Court," beginning page 371, also in chapter 19, title "Extent and Exercise of Judicial Power," beginning page 394, he gives much prominence to this opinion by Chief Justice TANEY.

Texas vs. White, 7 Wall. 700, decided 1868.

In this case the State of Texas, on the heels of the Civil War, sought relief in this Court. It was contended that Texas had seceded and voluntarily withdrawn itself from the Union and was therefore, not then a State entitled to its remedy under the Constitution. The Court overruled such contention, and took occasion to define the nature of the State as used in the Constitution. At pages 721 of the text, it was said:

"In the Constitution the term state most frequently expresses the combined idea just noticed, of *people, territory and government.*"

Therefore, when we speak of the State of Florida in the constitutional sense it embraces the trinity so defined by the Court in the language just quoted. What concerns the people at large in the State of Florida concerns the State itself. What constitutes a geographical discrimination against the territory comprising the State of Florida is a matter of State concern. What constitutes an abridgment of the State's power to determine for itself what forms of State taxation shall be effective within its boundaries, is also a matter of State concern. And when any of such rights are invaded by an act of Congress, without warrant under the Constitution, a cause of action arises in favor of the State which should be redressed in this Court.

Tarble's Case, 13 Wall. 397, decided 1871.

In this case the Court at text 407 laid down these propositions:

“Whenever, therefore, any conflict arises between the enactments of the two sovereignties, or in the enforcement of their asserted authorities, those of the National government must have supremacy until the validity of the different enactments and authorities can be finally determined by the tribunals of the United States. This temporary supremacy until judicial decision by the National tribunals, and the ultimate determination of the conflict by such decision, are essential to the preservation of order and peace, and the avoidance of forcible collision between the two governments. ‘The Constitution,’ as said by Mr. Chief Justice Taney, ‘was not framed merely to guard the States against danger from abroad, but chiefly to secure union and harmony at home.’

* * * * *

“And the judicial power conferred extends to all cases arising under the Constitution, and thus embraces every legislative act of Congress, whether passed in pursuance of it, or in disregard of its provisions. The Constitution is under the view of the tribunals of the United States when any act of Congress is brought before them for consideration.”

By reason of this temporary supremacy of the estate tax provisions of the Revenue Act of 1926 the citizens of Florida, the people constituting the State, are temporarily bound. The geographical discrimination against Florida as a territory is in effect, and the sovereign right of the State to give effect to its tax laws is abridged. In such circumstances the injury to the

State in its triune aspect, as defined in *Texas vs. White*, is irreparable, and merits injunctive relief at the hands of this Court. A state should not be turned away with direction to await a chance suit by some individual in a district court, congested by the Volstead Act, followed by delays for appeal and ultimate decision by this Court. If States are longer to have any rights in such matters, undoubtedly the Constitution contemplates that they should be heard in a direct proceeding on their own account.

Bailey vs. Drexel, 259 U. S. 20.

Perhaps no decision was ever rendered by this Court more clearly recognizing the sovereign rights of a State. The Drexel case and its predecessor, *Hammer v. Dagenhart*, involved two attempts on the part of Congress to revise the laws of North Carolina on the subject of a child labor. In the decision rendered in the Drexel case, the following are pertinent paragraphs:

“The law is attacked on the ground that it is a regulation of the employment of child labor in the States,—an exclusive state function under the Federal Constitution and within the reservations of the 10th Amendment.

* * * * *

“In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?

* * * * *

“In our view the necessary effect of this act is, by means of prohibition against the government in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States—a purely state authority.

In the case at bar, Congress, in the name of a tax, which, on the face of the act, is a penalty seeks to do the same thing, and the effort must be equally futile.

* * * * *

“Grant the validity of this law, and all that Congress would need to do hereafter, in seeking to take over to its control any one of the great number of subjects of public interests, jurisdiction of which the states have never parted with, and which are reserved to them by the 10th Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word ‘tax’ would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States.

* * * * *

“When Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a state, in order to coerce them into compliance with Congress’s regulation of state concern, the court said this was not in fact regulation of interstate commerce, but rather that of state concerns, and was invalid. So here, the so-called tax is a penalty to coerce people of a state to act as Congress wishes them to act in respect of a matter completely the business of the State government under the Federal Constitution.”

These recognitions of the sovereign rights of the State were given in a suit by a private party. The case of *Bailey v. George*, being a case denying an injunction at the suit of an individual, was decided on the same day. But suppose the State of North Carolina had been the party complaining in that case, what then? Using the language of Mr. Justice Baldwin in *Rhode Island vs. Massachusetts*, would it not be monstrous to concede the rights of the State of North Carolina, as does the opinion in the *Drexel* case, and yet deny any remedy at the suit of the state itself?

Florida's bill in the case at bar presents a similar question, though more exaggerated in degree, for here the Act of Congress undertakes not only to coerce the State into passing such inheritance tax law as the majority in Congress deem desirable, but goes to the point of nullifying a provision of the Constitution of this State. Does the State "stand naked and stripped of its defensive armor?"

Substantial Rights and Interests of State Injured.

We have shown that the great question involved in this case is the invasion of the State's sovereignty and jurisdiction, and that this Court has jurisdiction of the State's complaint in that behalf. Included within that general proposition there is also an invasion of particular rights and interests which are of State concern.

In the case of

Knowlton v. Moore, 178 U. S., text 96 to 106, the Court considered the history of the clause "uniform throughout the United States," pointing out that during the period under the Articles of Confederation

the levy of imposts and excises was considered in the same connection with regulations of external commerce, all bound by a rule of uniformity throughout the United States. The Court also pointed out from the proceedings in the Constitutional Convention that the prohibition against favoritism of ports of one State over those of another was originally in the same section with the requirement of uniformity as to the levy of taxes, and that the same became separated when the instrument was being redrawn by the Committee on Style. At page 105 of the text, the Court said:

“Thus, it came to pass that although the provisions as to preference between ports and that regarding uniformity of duties, imposts and excises were one in purpose, one in their adoption, they became separated only in arranging the Constitution for the purpose of style.”

Predicated upon such history, the Court arrived at the conclusion that the clause in question means “*geographical* uniformity throughout the United States.” That is to say, no discrimination against one State in favor of another or others.

Let us then suppose that Congress passed a new tariff law containing a provision that only 20% of the schedules levied should be collected in the ports of New Orleans, Mobile, Savannah and Charleston, while in the ports of Florida 100% must be collected. Could there be any more effective means of closing the ports of Florida to all foreign trade? Her warehouses and docks serving foreign trade might as well be burned. In such circumstances, would Florida as a State be defenseless, and without remedy in this or any other Court?

In *Wyoming v. Colorado*, 259 U. S. 419, it was held that

“The interests of the State (Wyoming) are inscubly linked with the rights of the appropriators” of waters in that State, and for that reason a bill by the State of Wyoming was sustained.

Would not the interests of Florida be insolubly linked with the closing of her ports to all foreign trade? If so, she would be entitled to sue in this Court to contest the validity of such a provision in a tariff law. Again, a credit provision of 80% of the tariff schedules in the ports of New Orleans, Mobile, Savannah and Charleston could not be explained in terms of producing federal revenue. If upon examination of hearings before committees, reports of committees, explanations of chairmen of committees, and the history of its enactment, it appeared that such discrimination against Florida ports was intended as a coercive device, seeking to compel Florida to levy a state income tax, or otherwise change her laws, there would then appear to be a plain invasion of her sovereignty, giving her an additional right to redress in this Court.

The geographical discrimination against Florida under the estate tax, with its 80% credit provision, is no less oppressive and penalizing, and no less a usurpation of the sovereign functions of the State than the supposed example under the tariff law would be. The Governor of this State has authorized the application to file the bill. That should be sufficient to demonstrate that the discrimination and penalizing effect of the Act and the invasion of the State's sovereignty are matters of State concern.

In *Missouri v. Holland*, 252 U. S. 416, the State asserted its jurisdiction and *quasi* sovereignty over migratory birds, in a bill seeking injunction against federal officers to prevent the enforcement of the Federal Migratory Bird Act. It was held that the question was justiciable, and the State would have been sustained except for a paramount treaty provision.

If people of wealth wish to immigrate to Florida, build homes there, and participate in its development, the State has the sovereign right and jurisdiction to determine what forms of tax they, and other citizens and residents of the State, shall pay to sustain the State's burden of government. When Florida is deprived of that right by an Act of Congress we respectfully submit that she is entitled to be heard by this Court.

When the discrimination against Florida keeps people of wealth away from her borders, and deters them from building homes and developing the resources of the State, there necessarily results a decreased demand for property, with consequent decrease in values, decrease in building operations, hotels with fewer guests, and, in fact, every man, woman and child in the State suffers consequential injury. In one constitutional sense the people of the State are the State itself (*Texas v. White*). Such injuries affect the State more vitally than the poisonous gas fumes flowing down into a valley of Georgia from the works of the Tennessee Copper Company. (*Ga. v. Tenn. Copper Co.*, 206 U. S. 237.) Moreover, not all the wealth in Florida is represented by those who came from other States. A great number born and reared in the State have accumulated fortunes in citrus culture, tobacco culture, tomato culture (*FEC v. Peters*,

72 Fla. 311) phosphate mining, naval stores, lumber, hotel business, banking, and other occupations. The discrimination against Florida will tend to drive such men out of Florida into other States where the *ad valorem* property tax is less, or none at all, and where the State's burden of government is supported by an inheritance tax forced upon the State by the 80% credit provision of the federal law.

"This is a matter of grave public concern in which the State, as the representative of the public, has an interest apart from that of the individuals affected. It is not merely a remote or ethical interest, but one which is immediate and recognized by law."

Pennsylvania v. West Virginia, 262 U. S. 553, 592.

As a further consequence to all such injuries the taxable values of the State will decrease, and the revenues of the State, largely derived from *ad valorem* taxation, will be correspondingly diminished.

If Florida's situation under the operation of this law was transposed to that of Massachusetts in 1765 under the Stamp Act, and later, under the Tea Tax, the argument of no injury to the State as such and of *parens patriae* would not be tolerated for one moment.

Greater than any pecuniary loss is the invasion of Florida's sovereign right, not to be measured in money, "unseduced, unmolested, unafraid, to pursue its own ideas of State policy." (Senator Bruce, Cong. Rec. 69th Cong. 1st Sess. pp. 3298-9)

If any other principle "be recongnized the independence of the State is destroyed." (Senator Caraway, Cong. Rec. 69th Cong. 1st Sess. p. 3296.)

“The result will be that the power and right of the States to impose taxes according to their judgment and according to the conditions which exist in their respective jurisdictions, will be wiped out, and the will of the Federal government with reference to State imposed taxes will be substituted for the will of the States.” (SENATOR SIMMONS, Cong. Rec. 69th Cong. 1st. Sess. p. 3304.)

“We have two separate sovereignties here in America, cooperating and coordinating, and so long as they continue to cooperate as provided in the Constitution, there is no danger to the sovereignty of either, but when one of these sovereignties, by reason of its immense power under the Constitution within the limitations of its authority, grows sufficiently strong to establish a system that undermines the sovereignty of the other, then our Federal representative system will go to pieces.” (Senator Simmons, Cong. Rec. 69th Cong. 1st Sess. p. 4200.)

To like effect is the decision of this Court in *Bailey v. Drexel*, 259 U. S. 20.

CONCLUSION.

As a friend of the Court, and as a friend of the State, born and reared on its soil, I have done my bit in bringing to the Court's attention matters which may assist in a proper solution of the questions presented. It is submitted, if the Court please, that the decision of this case should take its place in company with the great case of *Myers v. United States*, recently decided. Congress made two abortive attempts by indirection to revise state laws on the subject of child labor. It then pursued a constitutional course by proposing a constitutional amendment, which failed for want of ratification. Here we have an at-

tempt by indirection to revise state laws on the subject of inheritance taxes, and to punish the State or states which decline to obey the will of Congress. If the would-be reformers in Congress deem uniformity in the matter of State inheritance tax laws so essential to the well being of this country, let them pursue the constitutional method of proposing a constitutional amendment on that subject, and then submit the same for ratification, as the Constitution provides. The admonition of Washington's farewell address is pertinent:

"But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield."

This Court has ever been the bulwark of our dual system of government. The continuance of that system is the fundamental issue which Florida's case presents for decision.

Respectfully submitted,

THOMAS B. ADAMS,
Amicus Curiae.

I, J. B. Johnson, Attorney General for the State of Florida, do hereby consent to the filing and consideration of the foregoing brief.

J. B. JOHNSON,
Attorney General
for the State of Florida.

To Honorable Wm. D. Mitchell,
Solicitor General of the United States.

You will please be advised that I shall at the convening of the Supreme Court of the United States on the 22d day of November, 1926, make application to said Honorable Court for leave to file the aforesaid brief, two copies of which are handed to you herewith.

THOMAS B. ADAMS,
Amicus Curiae.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1926.

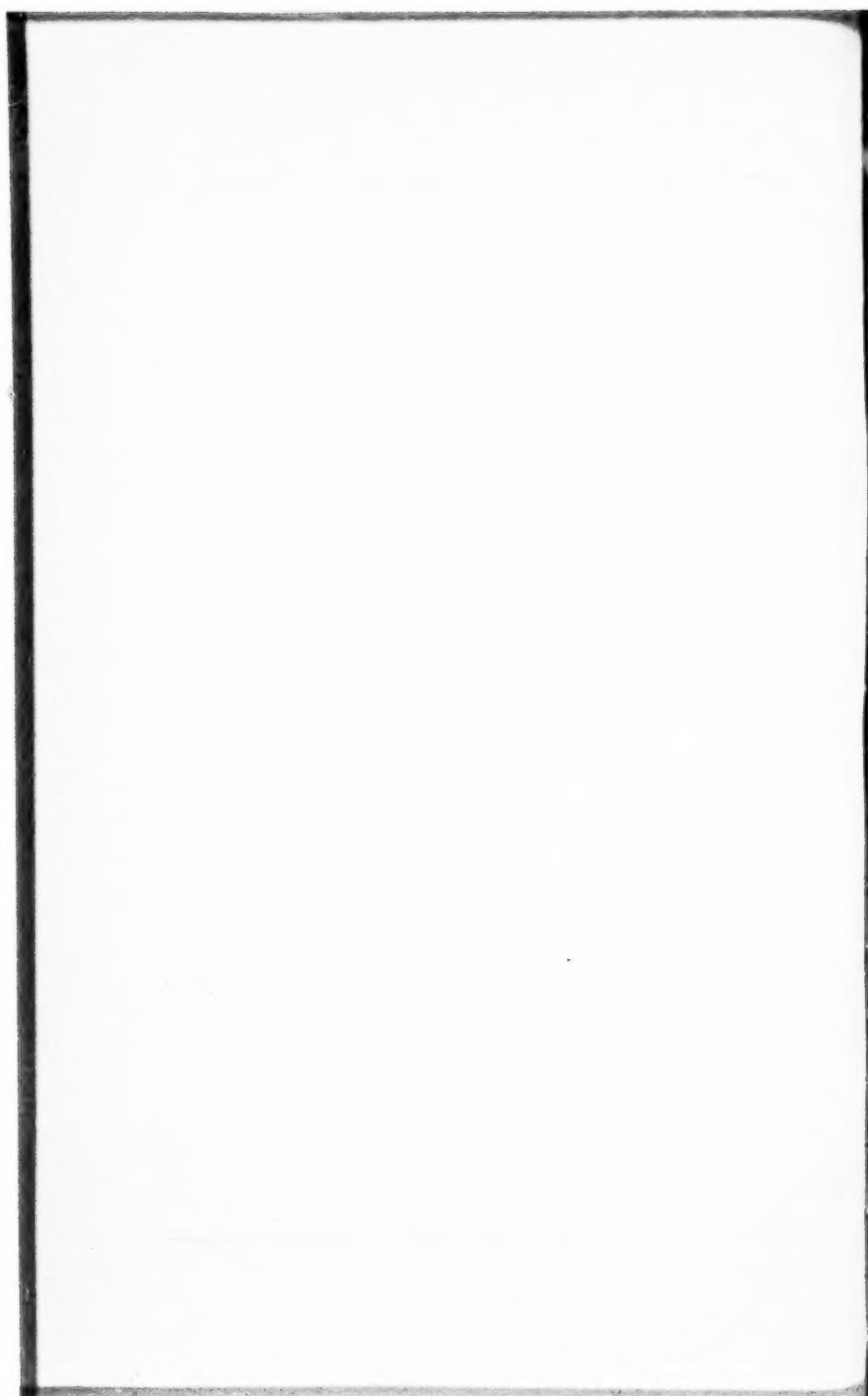
No. , Original.

STATE OF FLORIDA, *Complainant*,
vs.

ANDREW W. MELLON, as Secretary of the Treasury of
the United States; and DAVID H. BLAIR, as Com-
missioner of Internal Revenue of the United
States, *Defendants*.

**BRIEF ON RULE DIRECTED TO DEFENDANTS
TO SHOW CAUSE WHY THE STATE SHOULD
NOT BE ALLOWED TO FILE BILL OF COM-
PLAINT, RETURNABLE OCTOBER 4th, A.D.
1926.**

EDWARD A. HARRIMAN,
As Amicus Curiae.



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1926.**

STATEMENT OF FACTS.

The nature of the bill is set forth in the brief of the
complainant's counsel. It is a bill—

- (1) by the State of Florida;
- (2) against Andrew W. Mellon, as Secretary of the

Treasury, a citizen of the State of Pennsylvania, and David H. Blair, as Commissioner of Internal Revenue, a citizen of the State of North Carolina;

(3) to enjoin the defendants from proceeding to assess against or collect from the legal representatives of decedents' estates in the State of Florida the taxes sought to be imposed by Section 301 of the Revenue Act of 1926, and from requiring returns from said representatives preparatory to the assessment and collection thereof, and from taking any steps looking to the enforcement of said Section 301;

(4) upon the ground that said Section 301 is unconstitutional, and because it violates the provision of Section 8 of Article one of the Constitution that all duties, imposts and excises shall be uniform throughout the United States; and,

(5) that the enforcement of such an unconstitutional tax law against the estates of decedents in the State of Florida constitutes a violation of the legal rights of the State for which the State has no adequate remedy at law.

The attention of the Court is called to the following reasons why the motion for leave to file the bill should be granted:

I.

This Court is Given Original Jurisdiction of This Case by the Constitution.

Article III, Section 2 of the Constitution provides that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution * * * controversies * * * between a State and Citizens of another State."

The judicial power of the United States over this

case rests upon two grounds, first, that the case arises under the Constitution; and, second, that it is a controversy between a State and citizens of another State. The original jurisdiction of this Court rests on the provision of the second paragraph of Article III, Section 2, "In all Cases * * * in which a State shall be Party, the Supreme Court shall have original jurisdiction." On the face of the Constitution it would appear that the State has an absolute right to file a bill against citizens of another State, and that this Court, having jurisdiction, would be bound to proceed to a hearing on the merits of the bill. The interpretation placed upon the Constitution by this Court, however, becomes a part of the Constitution itself. The practice has grown up of requesting leave to file a bill, and the Court has taken a short cut, as a matter of procedure, by refusing leave to file a bill when it clearly appears that the complainant is entitled to no relief. It follows, therefore, that upon the present motion for leave to file the bill, the merits of the bill itself are before the Court; but it equally follows that in case of any doubt as to the merits, the Court should take jurisdiction, and not in a summary manner deprive the State of its right to a full hearing in the usual course upon the merits. In the present case the constitutional question involved is absolutely new. From the beginning of this Government to the year 1924, no attempt has ever been made by Congress to violate the rule of geographical uniformity in the levying of duties, imposts and excises. No attempt has ever before been made to discriminate between different States in a Federal revenue act for the purpose of controlling State legislation. The question involved in its constitutional aspect is one of the most important that

has ever arisen. The two provisions in the Constitution for the protection of the States against discrimination were, as to direct taxes, apportionment in accordance with representation; as to indirect taxes, geographical uniformity throughout the country.

In *Pollock v. Farmers Loan & Trust Co.*, 157 U. S. 429, this Court had occasion to consider the constitutionality of a Federal income tax laid without regard to the provision for apportionment. The present case is of even greater importance, for not only is the amount of money involved in the Federal Estate Tax enormous, but a sovereign State claims that the present tax violates its constitutional rights; whereas, in the income tax case only private parties were involved in the litigation, and no State questioned the validity of the tax. It is submitted, therefore, that the question involved in this case ought not to be disposed of summarily upon motion, but should be heard by the Court with as much consideration and as full argument as was had in the case of *Pollock v. Farmers' Loan & Trust Co.*

II.

R. S. Section 3224 Is No Bar to This Action.

(a) As a matter of construction this statute does not apply in this case, because of its exceptional and extraordinary circumstances.

Dodge v. Brady, 240 U. S. 122.

Hill v. Wallace, 259 U. S. 44.

(b) To construe the statute as applying to this case would render it unconstitutional.

The Constitution gives original jurisdiction to the Supreme Court in a case between a State and citizens

of another State. Jurisdiction so given can not be altered by Act of Congress.

Marbury v. Madison, 1 Cranch. 137, 174.

The Alicia, 7 Wallace, 571.

If, then, the State has a right under the Constitution, it is entitled to the enforcement of that right by the remedies in force at the time of the adoption of the Constitution, and if there is at law no adequate remedy for the right of the State, the equitable remedy of injunction must be granted.

III.

The State of Florida Has a Constitutional Right Which Is Invaded by This Unconstitutional Legislation.

It will be urged, of course, that the only persons injured by this unconstitutional tax are the taxpayers from whom the money is taken. Ordinarily, when a tax is unconstitutional, the taxpayer is the only person injured. In this particular case, however, each State has a legal right to insist that the power of taxation conferred upon the Federal Government by the Constitution shall not be exceeded to the detriment of the State. The question as to the power of taxation to be conferred upon the Federal Government was one of the most vital issues before the Constitutional Convention.

See Farrand, *Records*, II, 211, 212, 410; III, 83, 84, 99, 100, 149, 365.

Hamilton, "*Federalist*," Nos. XXXII, XXXVI.

"So when the wealthier States as between themselves and their less favored associates, and all as between themselves and those who were to

come, gave up for the common good the great sources of revenue derived through commerce, they did so in reliance on the protection afforded by restrictions on the grant of power.

"Thus, in the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts and excises."

Chief Justice Fuller, in *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 557.

"One of the principal objects of the proposed new government was to obviate this defect of the confederacy by conferring authority upon the new government by which taxes could be directly laid whenever desired. Great difficulty in accomplishing this object was found to exist. The States bordering on the ocean were unwilling to give up their right to lay duties upon imports which were their chief source of revenue. The other States, on the other hand, were unwilling to make any agreement for the levying of taxes directly upon real and personal property, the smaller States fearing that they would be overborne by unequal burdens forced upon them by the action of the larger States. In this condition of things great embarrassment was felt by the members of the convention. It was feared at times that the effort to form a new government would fail. But happily a compromise was effected by an agreement that direct taxes should be laid by Congress by *apportioning them among the States according to their representation*. In return for this concession by some of the States, the other States bordering on navigable waters consented to relinquish to the new government the control of duties, imposts, and excises, and the regulation of

commerce, with the condition that the duties, imposts, and excises should be *uniform throughout the United States*. So that, on the one hand, anything like oppression or undue advantage of any one State over the others would be prevented by the apportionment of the direct taxes among the States according to their representation, and, on the other hand, anything like oppression or hardship in the levying of duties, imposts, and excises would be avoided by the provision that they should be uniform throughout the United States. This compromise was essential to the continued union and harmony of the States. It protected every State from being controlled in its taxation by the superior numbers of one or more other States."

Mr. Justice Field, in *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 587, 588.

"Now, that the requirement that direct taxes should be apportioned among the several States, contemplated the protection of the States, to prevent their being called upon to contribute more than was deemed their due share of the burden, is clear. Giving to the term uniformity as applied to duties, imposts and excises a geographical significance, likewise causes that provision to look to the forbidding of discrimination as between the States, by the levying of duties, imposts or excises upon a particular subject in one State and a different duty, impost or excise on the same subject in another; and therefore, as far as may be, is a restriction in the same direction and in harmony with the requirement of apportionment of direct taxes. And the conclusion that the possible discrimination against one or more States was the **ONLY** thing intended to be provided for by the rule which uniformity imposed upon the power to levy duties, imposts and excises, is greatly strengthened by considering the state of the law, in the mother country and in the colonies, and the

practice of taxation which obtained at or about the time of the adoption of the Constitution.”

Mr. Justice White, in *Knowlton v. Moore*, 178 U. S. 41, 89.

Nothing can be clearer, therefore, than that the object of this constitutional provision for the uniformity of indirect taxes was *to protect the States against discrimination*. Is it reasonable to say that a clause, which was a compromise, representing the combined wisdom of the statesmen of 1787, a clause the sole purpose of which was to prevent discrimination, gives a State no right whatever to any protection against such discrimination from this Court? Whether the right be called a contract right or a property right is immaterial. It was in reliance upon the assertion of this right in the Constitution and upon the belief in the protection of this right by this Court that the States ratified the Constitution, and if this Court is unable, or unwilling, to protect the State by the enforcement of such right against the defendants who seek to violate that right under authority of an unconstitutional Act of Congress, the framers of the Constitution did not know what they were doing when they agreed upon the clause in question. To provide by the fundamental law of the land for the protection of a State against discrimination, to give this Court jurisdiction against these defendants, and then to say that the State can secure no protection from this Court, is to treat this clause of the Constitution as a mere pious wish, whereas it is the glory of the statesmen of 1787 that they produced a Constitution, not to secure rhetorical sublimity, but to operate as an effective legal instrument, defining with legal accuracy the rights of the Federal Government and of the States.

In *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, a case far more doubtful than the present, the Court went very far to protect the right of the States to the apportionment of direct taxes in an action by a taxpayer. As the Court says in *Knoultton v. Moore*, 178 U. S. 41, 89, the requirement of apportionment "contemplated the protection of the States." Is it conceivable that when a provision restricting the Federal power of taxation was placed in the Constitution for the protection of the States, a State can secure such protection only by the chance suit of a taxpayer, and has no standing in Court to secure for itself the protection guaranteed to it as a State by the Constitution?

IV.

Section 301 of the Revenue Act of 1926 is Unconstitutional Because It Violates the Rule of Geographical Uniformity.

The statute in question must be construed as a whole. The effect of the statute is to levy a tax of a certain percentage on an estate in Florida, which has no inheritance tax, and of a different percentage on an estate in a State where there is a State inheritance tax. The only possible argument that can be made to support this Act is that the tax and the credit are separable. The credit, however, is an essential part of the taxing scheme. It may be that the ulterior motive of Congress in discriminating against Florida is not in itself sufficient to invalidate the tax, but such motive is nevertheless relevant on the point as to what Congress actually intended to do, regardless of what ulterior results it expected to accomplish. Now, what Congress intended to do is perfectly clear. It in-

tended to collect a different percentage of tax on estates situated in different States. It is true that there is the usual provision in the Act that if any part of it is declared unconstitutional, the remaining portion may be upheld. It is impossible, however, to declare the credit unconstitutional and the tax valid, for the credit is an essential part of the tax, and to discard the provision for the non-uniform credit while collecting the tax uniformly, would involve the levying of a tax in some States five times as large as Congress evidently intended. The fact that the tax which Congress intended to levy is unconstitutional does not permit the Court, by discarding the credit provision, to levy a greater tax than was intended by Congress.

V.

The State Has No Adequate Remedy at Law.

The injury to the State is, first, in the forcible removal by illegal means of a portion of the property within that State.

In *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, 237, the Court said that the State "has the last word as to whether its mountains shall be stripped of their forests." Florida has no mountains, but it equally has the last word as to whether its orange groves shall be stripped of their fruit, either by the fumes of a smelter, or by the illegal action of a Federal tax collector. The State is also directly interested in retaining its own population and encouraging the immigration of others. Now, as Congressman Frear says (quoted on page 29 of the complainant's brief), "States are bidding against each other in exempting taxes." It is quite natural that a State where exemption from

snow and ice is granted by Heaven, and an exemption from inheritance taxes by the Constitution of the State, should attract immigration and excite the jealousy of other States less favored. It is perfectly natural, therefore, that such other States should attempt to use their power in Congress for the purpose of diminishing the attractions of Florida, and to this there is no legal objection so long as the Constitution is not violated. If the other States wish to discriminate against Florida, they may do so lawfully by inducing Congress to put an excise tax on oranges and winter golf; but they cannot put one tax on oranges and winter golf in Florida and another tax on the same tropical products in California. The quotation in the Complainant's brief from the Congressional Record show clearly the practical importance to Florida of its exemption from inheritance taxes. In Great Britain the same attraction exists in the Island of Jersey for English taxpayers, an attraction which has proved so great that a change in the English law is called for. The damage to the State is not to be measured by the mere amount of tax which these defendants may unlawfully collect from the estates of Florida decedents, but is quite beyond measure. Moreover, even if the damages could be measured by the taxes so collected by these defendants, a perpetual series of actions would be necessary for the State to recover such damages. Both on the ground of irreparable injury and of multiplicity of actions, therefore, the State is entitled to an injunction.

"If the State has a case at all, it is somewhat more certainly entitled to specific relief than a private party might be. It is not lightly to be required to give up *quasi-sovereign* rights for pay; and, apart from the difficulty of valuing such

rights in money, if that be its choice it may insist that an infraction of them shall be stopped.”

Georgia v. Tennessee Copper Co., 206 U. S. 230, 237.

Respectfully submitted,

EDWARD A. HARRIMAN,
As *Amicus Curiae*.